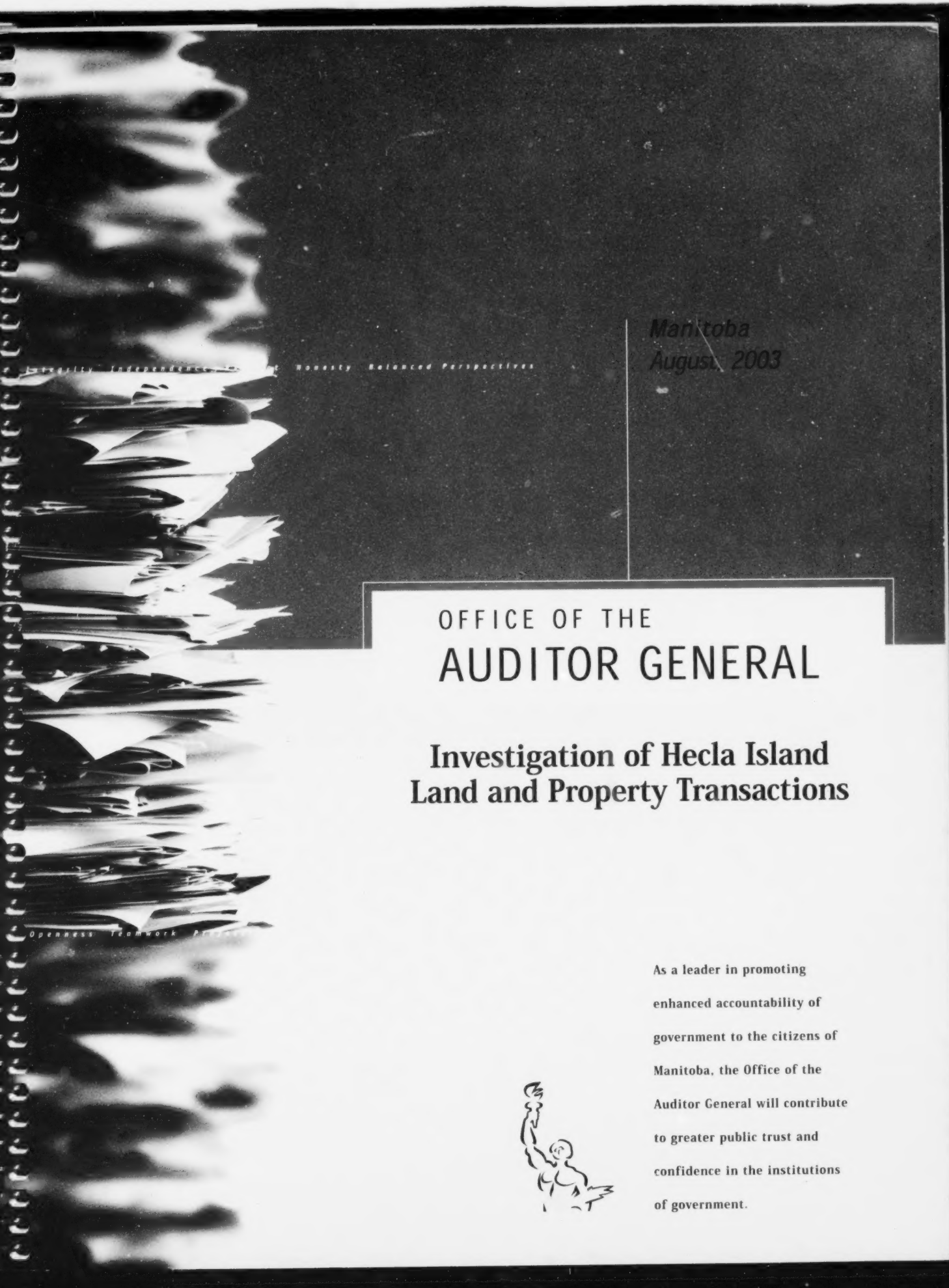

Manitoba
August, 2003

OFFICE OF THE
AUDITOR GENERAL

Investigation of Hecla Island Land and Property Transactions

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PROJECT TEAM
Jon Singleton
Bonnie Lysyk
Jack Buckwold
John Donnelly

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Errol Harris,
Consultant
Brian Tario,
Deloitte & Touche LLP
Forensic &
Investigative Services

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Copies of this report may be obtained by contacting:

Office of the Auditor General

500–330 PORTAGE AVENUE

WINNIPEG, MANITOBA CANADA R3C 0C4

PHONE: 204 945 3790 FAX: 204 945 2169

EMAIL: contact@oag.mb.ca

WEBSITE: www.oag.mb.ca

Office of the Auditor General
500 - 330 Portage Avenue
Winnipeg, Manitoba R3C 0C4

August 2003

The Honourable George Hickes
Speaker of the House
Room 244, Legislative Building
Winnipeg, Manitoba
R3C 0V8

Dear Sir:

I have the honour to transmit herewith my August 2003 report on the Investigation of Hecla Island Land and Property Transactions to be laid before Members of the Legislative Assembly in accordance with the provisions of Section 28 of The Auditor General Act.

Respectfully submitted,

Jon W. Singleton, CA•CISA
Auditor General

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Fairness in transactions between government and citizens is essential. Bureaucratic processes and controls, often maligned for being poorly designed, are in fact key to ensuring that a standard of fairness is met.

I hope that this report will provide readers with an understanding of how fairness can be lost when the appropriate accountability and public transparency mechanisms are not in place.

Citizens of Manitoba have the right to assume that provincial responsibilities are managed and executed in a manner that considers the interests of all stakeholders, while ensuring that public resources are managed in an effective, efficient, and economical manner. When arrangements are entered into with individuals or groups without appropriate checks and balances in place, public resources may be put at risk. Further, the concepts of conflict of interest and preferential treatment need to be seriously considered in all decision-making.

This report shows that the Department of Conservation (formerly the Department of Natural Resources) abdicated its responsibility to ensure fairness, transparency and accountability with respect to the resettlement of Hecla Island. The abdication is represented primarily in the failure to establish appropriate processes and controls over the resettlement program.

It is naturally disappointing that problems identified in this report were allowed to arise, and were not addressed by the Department previously. Having said that, I am encouraged by the acceptance of our report and recommendations by current senior officials of the Department of Conservation. There is considerable work required by them to address the many issues contained in our report. I am hopeful that this will be done in an expeditious manner.

Jon W. Singleton, CA•CISA

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Jon W. Singleton, CA•CISA

Executive Summary

In September 2001 the Office of the Auditor General (OAG) was approached by citizens of Manitoba who brought forward allegations regarding the conduct of the Department of Conservation (Department), formerly the Department of Natural Resources, concerning its management of issues related to the resettlement of Hecla Island. The allegations principally related to inequitable application of eligibility criteria for the awarding of cottage lots, and the conflict of interest of ex-landowners on Hecla Island [allowed by the Department through a ministerial advisory committee, commonly referred to as the Hecla Advisory Committee (HAC)]. Additional allegations related to the process for the awarding of a lease to operate the marina at Gull Harbour on Hecla Island and to preferential treatment given to a family of a former Deputy Minister of Natural Resources regarding a land exchange on Hecla Island.

The Manitoba Ombudsman had also received complaints related to the resettlement of Hecla Island involving land transactions, financial consideration and allegations/ perceptions of conflict of interest. In consultation with the Ombudsman it was determined that the OAG would conduct an investigation.

On February 4, 2002, after our preliminary review of the allegations, the Deputy Minister of Conservation was notified by letter of our intention to perform an investigation into Hecla Island land transactions.

Our work consisted of such examinations and procedures that we determined were necessary to address the allegations raised as well as any other issues that arose during the course of this investigation.

Our investigation was conducted from May 2002 to December 2002 and included extensive interviews; analysis of Department files, files of Land Management Services and financial information; and a detailed review of correspondence and other supporting documentation. Documentation reviewed extended over the period January 1969 through to December 2002.

In summary, our investigation concluded on allegations as follows:

Summary of Allegations and Conclusions

Allegations	Conclusions
The Hecla Advisory Committee (Section 4.1)	
• That the Hecla Advisory Committee had neither legal foundation nor terms of reference, and was not accountable to the Department for its actions.	• The HAC was not formally established in documentation under Section 29(1) and Section 29(2) of the Provincial Parks Act, and therefore with no approved terms of reference, the HAC operated as it saw fit.
The Hecla Historic Village Association (Section 4.2)	
• That the executive of the Hecla Historic Village Association, acting as an advisory	• This advisory group has not been formally established in documentation under Section

Allegations	Conclusions
committee, has neither legal foundation nor terms of reference, and is not accountable to the Department for its actions.	29(1) and Section 29(2) of the Provincial Parks Act and Section 62.1(1) of the Park Activities Regulation. • By reviewing, commenting on, and issuing instructions with respect to building applications and/or modifications to existing structures, prior to October 1998, the ex-landowner members of the HAC had been acting beyond the scope of a variance advisory committee as allowed by the then existing Regulation.
Lot Acquisition (Section 5.0) • That the rules and procedures relating to eligibility to acquire a lot in the Hecla Historic Village cottage subdivision were administered inequitably.	• The rules and procedures were administered inequitably. This was confirmed by the following: ***Application Process (Section 5.1)*** • The administration of applications and communications of the process were not well-managed or controlled. The process was not fair, open or transparent. ***Application of Eligibility Criteria (Section 5.2)*** • There was no consistency of understanding by the members of the HAC as to how the eligibility criteria were to be applied. Their interpretation and subsequent application of these criteria for entitlement were inconsistent, did not always adhere to the stated criteria, and as a result not all applicants were treated equitably. These changes to the stated criteria were never publicly communicated. Without being open and transparent regarding eligibility criteria, the process was not fair. • Department officials either knew or should have known that the process used for eligibility was not fair, open or transparent. ***Hecla Historic Village Public Draw (Section 5.3)*** • Although the Department defined family in the public Information Package, in terms of the resettlement of the Hecla Historic Village, they did not define family when it came to the public draw. However, in the absence of a definition of family, it is reasonable to conclude that any individual may apply and hence the process was fair.

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Allegations	Conclusions
	Assignment of Lots (Section 5.4) • Some of the ex-landowner members of the HAC inappropriately benefited financially from the use of falsely signed documents and had inside information that enabled them to circumvent the rules in place. We have referred this matter to the Deputy Attorney General of Manitoba with a recommendation that the matter be referred to police for potential criminal investigation. • The process for the assignment of lots was not fair, open or transparent. ***Problematic Property Acquisition (Section 5.5)*** • The draw for the former Golf Pro's house was not open to the public and therefore not transparent as to its process. No independent verification of this process took place. • One individual inappropriately obtained a financial benefit by acquiring a residence for a price less than what it would have cost to build such a house. This individual did so through the use of falsely signed documents. We have referred this matter to the Deputy Attorney General of Manitoba with a recommendation that the matter be referred to police for potential criminal investigation.
Pricing of Lots and Houses (Section 6.0) • That the Department leased vacation home lots and sold houses on Hecla Island for amounts considerably below fair market value.	***Pricing of Lots (Section 6.1)*** • The overall pricing of lots well below market value was a public policy decision approved by Cabinet and was seen as an important element in repopulating Hecla Island and stimulating its economy. ***Pricing of Houses (Section 6.2)*** • Nine ex-landowners were able to acquire housing for their leased lots at considerably below fair market value. The ex-landowner members of the HAC, as the executive of the Ex-Landowners Association, were able to influence the decision making with respect to the sale prices of these houses. • These transactions were approved under the authority of the Director of Parks. The Department failed to ensure that appropriate documentation was maintained as a means of demonstrating that this process could withstand public scrutiny.

Allegations	Conclusions
	• We believe that the special duty of care owed to the citizens of Manitoba in the management of public resources was not honoured in these cases.
Conflict of Interest (Section 7.0)	
Former Deputy Minister and Department Staff (Section 7.1)	***Former Deputy Minister and Department Staff (Section 7.1)***
• That a former Deputy Minister of the Department placed himself in a conflict of interest situation.	• The former Deputy Minister declared his conflict of interest and formally separated himself from the decision making on transactions associated with the resettlement of Hecla Island. We did not find any instances where the Deputy Minister breached his conflict of interest declaration.
• That staff of the Department placed themselves in a conflict of interest situation.	• A Department staff member in a conflict of interest situation acted contrary to the instructions of the Department by being involved in the determination of some eligibility.
Ex-landowner Members of the HAC (Section 7.2)	***Ex-landowner Members of the HAC (Section 7.2)***
• That the ex-landowner members of the Hecla Advisory Committee placed themselves in a conflict of interest situation with respect to the determination of entitlement for lots in the Hecla Historic Village.	• By agreeing to serve on the HAC, the ex-landowner members of the HAC placed themselves in a conflict of interest situation. Unfortunately, they did not take steps to mitigate this conflict so that an fair, open and transparent process could take place.
	• We believe that certain ex-landowner members of the HAC took advantage of their position and used their access to detailed information to inappropriately benefit themselves or their families.
Design Controls (Section 7.3)	***Design Controls (Section 7.3)***
• That the ex-landowner executive members of the Hecla Historic Village Association placed themselves in a conflict of interest situation by reviewing and approving building permit applications for each other.	• The ex-landowner executive members of the Hecla Historic Village Association placed themselves in a conflict of interest situation by reviewing and approving building permit applications for each other.
	• By abdicating its responsibility the Department has allowed deviations from the Hecla Historic Lands Design Guidelines to occur.
Gull Harbour Marina (Section 9.0)	***The Proposal Call Process (Section 9.3)***
• That the selection process used by the Department for the leasing of the Gull Harbour Marina was handled inappropriately.	• The Proposal Call process was conducted appropriately in accordance with the procedures as outlined in Policy Directive PR1306 of the Policy and Procedures Manual of the Department.

Allegations

Conclusions

The Selection Process (Section 9.4)

- Proposers were placed at a disadvantage when they were not given an opportunity to resubmit proposals when consideration was subsequently given to including the operation of the Motel Unit as part of the lease.

- As a result of the minimal documentation surrounding the selection process, we are unable to form an opinion on the fairness of the selection process.

- The policy of selecting someone local to the Island for reviewing the proposals created an undue risk of the perception of a conflict of interest.

The Lease (Section 9.5)

- The original proposers were disadvantaged when the Motel Unit and contents, the overflow camping area, and the lakefront strip of land were included in the lease at no additional cost.

- The lessee was advantaged when the lease was structured such that the lessee's requirement to fulfill his promised obligations as stated in his proposal was based solely on the lessee's "good faith". This places the Province at a disadvantage for ensuring that conditions in the proposal on which the lessee was selected are met.

- The Department acted in bad faith by not honouring a verbal commitment to transfer the Motel Unit to Venture Manitoba Tours Ltd.

- The Department has neither received nor sought the required Certificate of Insurance from the lessee. As such, the Department may be unknowingly exposed to significant risk from any lawsuits resulting from the operation of the Marina.

The Sewage Line (Section 9.6)

- The Gull Harbour Marina Proposal Call specifically identified that the responsibility for the costs associated with a sewage line would be that of the Marina operator. However, when approached by the Marina operator about this project, the Department changed its position and paid for the installation of the line.

Allegations	Conclusions
	• In addition to the advantages afforded to the Marina operator, noted in Sections 9.4 and 9.5 above, the operator financially benefited from the sewer line tie-in and the original proposers were disadvantaged. • In the absence of a formal agreement the Department has no assurance that the verbal agreement between the parties will be honoured thereby placing public monies at risk.
Former Deputy Minister Family Land Transactions (Section 10.0) • That the family of a former Deputy Minister of the Department received preferential treatment concerning an exchange of Crown land on Hecla Island.	• The family of a former Deputy Minister of the Department received preferential treatment concerning an exchange of Crown land on Hecla Island in a manner that, except for public consultation, was consistent with our criteria for preferential treatment. The minister who authorized preferential treatment had the authority to do so, and the process granting preferential treatment, and the subsequent processes, complied with relevant legislation and regulations. However, more effort could have been made to inform the public of the rationale for the granting of the preferential treatment, even though a public consultation was not required under the Provincial Parks Act in effect at that time.
Private Landowner Land Transaction (Section 11.0) • That a Hecla Island private landowner received preferential treatment concerning an exchange of Crown land on Hecla Island.	• Given the above criteria for assessing preferential treatment, a Hecla Island private landowner received preferential treatment concerning an exchange of Crown land on Hecla Island that was consistent with our criteria for preferential treatment. The Minister who authorized preferential treatment had the authority to do so, and the process granting preferential treatment, and the subsequent processes, complied with relevant legislation and regulations. In this case, a public consultation was conducted to inform the public of the rationale for the granting of the preferential treatment in compliance with the Provincial Parks Act of 1996.

Hecla Land Use and Other Issues and Conclusions

Allegations	Conclusions
Hecla Land Use and Other Issues (Section 8.0)	***Hecla Land Use Issues (Section 8.1)*** • By abdicating its responsibility the Department permitted land uses on Hecla Island to occur that were contrary to the intent of the existing Parks Act and Regulations. • The Department should not have issued a handbook with instructions that contravened the Regulations. ***Non-Compliance - Crown Lands Act (Section 8.2)*** • By not enforcing Section 30(1) of the Crown Lands Act relating to the acquisition of a right, title, or interest in Crown Land by employees of the Department, the Department may have contributed to the occurrence of conflict of interest situations. This lack of enforcement affords employees, who may have insider information, the opportunity to personally profit from that information. ***Non-Compliance - Executive Government Organization Act (Section 8.3)*** • By not enforcing Section 10(1) of the Executive Government Organization Act relating to the delegation of signing authority, the Department may have put the Province at risk. As our investigation was limited to the resettlement of Hecla Island, we have not investigated the extent of non-compliance with signing authorities within the Department as a whole or what legal implications this may lead to.

Our recommendations regarding Hecla Island lot and property transactions are contained in Section 12.0 of this report.

1.0 Introduction

1.1 REQUEST

In September 2001 the Office of the Auditor General (OAG) was approached by citizens of Manitoba who brought forward allegations regarding the conduct of the Department of Conservation (Department), formerly the Department of Natural Resources, concerning its management of issues related to the resettlement of Hecla Island. The allegations principally related to inequitable application of eligibility criteria for the awarding of cottage lots, and the conflict of interest of ex-landowners on Hecla Island [allowed by the Department through a ministerial advisory committee, commonly referred to as the Hecla Advisory Committee (HAC)]. Additional allegations related to the process for the awarding of a lease to operate the marina at Gull Harbour on Hecla Island and to preferential treatment given to a family of a former Deputy Minister of Natural Resources regarding a land exchange on Hecla Island.

The Manitoba Ombudsman had also received complaints related to the resettlement of Hecla Island involving land transactions, financial consideration and allegations/ perceptions of conflict of interest. In consultation with the Ombudsman it was determined that the OAG would conduct an investigation.

On February 4, 2002, after our preliminary review of the allegations, the Deputy Minister of Conservation was notified by letter of our intention to perform an investigation into Hecla Island land transactions.

1.2 ALLEGATIONS

We received the following allegations concerning the conduct of both the HAC and the Department regarding the resettlement of Hecla Island:

- That the Hecla Advisory Committee had neither legal foundation nor terms of reference, and was not accountable to the Department for its actions;
- That the executive of the Hecla Historic Village Association, acting as an advisory committee, has neither legal foundation nor terms of reference, and is not accountable to the Department for its actions;
- That the rules and procedures relating to eligibility to acquire a lot in the Hecla Historic Village cottage subdivision were administered inequitably;
- That the Department leased vacation home lots and sold houses on Hecla Island for amounts considerably below fair market value;
- That a former Deputy Minister of the Department placed himself in a conflict of interest situation;
- That staff of the Department placed themselves in a conflict of interest situation;

- That the ex-landowner members of the Hecla Advisory Committee placed themselves in a conflict of interest situation with respect to the determination of entitlement for lots in the Hecla Historic Village;
- That the ex-landowner executive members of the Hecla Historic Village Association placed themselves in a conflict of interest situation by reviewing and approving building permit applications for each other;
- That the selection process used by the Department for the leasing of the Gull Harbour Marina was handled inappropriately;
- That the family of a former Deputy Minister of the Department received preferential treatment concerning an exchange of Crown land on Hecla Island; and
- That a Hecla Island private landowner received preferential treatment concerning an exchange of Crown land on Hecla Island.

1.3 SCOPE

Our work consisted of such examinations and procedures that we determined were necessary to address the allegations raised as well as any other issues that arose during the course of this investigation.

Our investigation was conducted from May 2002 to December 2002 and included extensive interviews; analysis of Department files, financial information, and files of Land Management Services; and a detailed review of correspondence and other supporting documentation. Documentation reviewed extended over the period January 1969 through to December 2002.

We interviewed current and former Department personnel, members of the HAC, individuals holding leases to Crown land on Hecla Island, and other individuals who were identified during our investigation as having pertinent information that would assist us.

We engaged Deloitte & Touche Inc. Forensic & Investigative Services to work with our office during this investigation.

Appendix A contains a glossary of terms which are referenced in the report.

1.4 EXPECTATIONS

In reviewing the circumstances and the documentation regarding the Hecla Island land and property transactions, our expectations were that the following practices, procedures or processes would have been in place:

- That the Department would have demonstrated control and management of the process for the resettlement of Hecla Island;
- That the authenticity of information provided on Department forms submitted to the Department would be verified by the Department;
- That advisory committees acting in conjunction with the Province had legal foundation and formal terms of reference that detailed their structure and duties;

- That advisory committees maintained formal minutes detailing their deliberations and decisions;
- That in a public offering of leased lots, the Department would have formally notified all potentially eligible individuals;
- That all criteria and rules related to the offering would be clearly outlined and communicated to the public;
- That any changes to those criteria and rules would be clearly outlined and communicated to the public;
- That all applications would be accepted and judged consistently using the stated criteria and according to the established rules;
- That the rationale for all decisions regarding the awarding of lots would be formally documented;
- That all public draws for lots or property would be conducted in the presence of an independent observer;
- That the rationale for the pricing of public assets to be sold would be formally documented;
- That no employees of the Department or advisory committee members would have placed themselves or acted in a conflict of interest situation;
- That Historic Lands Design Guidelines in Hecla Island would have been followed;
- That all land uses in Hecla Island would be in accordance with the Provincial Parks Act Regulations in effect at those times;
- That an assessment of the Gull Harbour Marina tenders and the selection process would be clearly, thoroughly, and completely documented;
- That the lease for the Gull Harbour Marina would require the lessee to fulfill his obligations as stated in his original competitive proposal and that the lease would not place the Province at a disadvantage; and
- That should there be preferential treatment, the documentation outlining the circumstances leading to preferential treatment would have been complete and the rationale would have been communicated to the public.

The conclusions and recommendations contained in this report result from an assessment of findings indicating whether these expectations were or were not met.

2.0 Background

Hecla Island is located one hundred and ninety kilometers north of Winnipeg, in the south basin of Lake Winnipeg. The Island's total acreage is 38,900 of which 5,034 acres were privately owned in 1969.

The Hecla Provincial Park was established August 27, 1969. In order to implement a development plan for the Park the Province decided to purchase the private land and buildings on Hecla Island. Consequently, the Province began negotiations to purchase

the private lands on Hecla Island. Where negotiations failed, expropriation was initiated. Ninety-eight properties were implicated:

- 56 properties were acquired by mutual agreement;
- 1 property was transferred to the Province;
- 18 properties were expropriated and compensation claims settled;
- 17 additional properties were expropriated but compensation was disputed. All disputed claims were ruled on by the courts;
- 3 properties had expropriation abandoned; and
- 3 properties were not expropriated.

A number of objections were raised by landowners concerning the expropriations. As a result, the government appointed an inquiry officer in 1971 to determine whether the intended expropriations were fair and reasonably necessary for the achievement of the objectives of the expropriating authority (the Department). The findings of this inquiry became known as the Walker Report.

The Walker Report concluded that complete Crown ownership of the lands contained in the Park was a convenience rather than a necessity. The report also indicated that insufficient compensation had been provided to residents to relocate to equivalent accommodation. Subsequent to the Walker Report, three expropriations that had been initiated were not completed and three properties never received expropriation notices.

Since the time of Park establishment, some of the Hecla Island ex-landowners maintained a constant desire to return to living on the Island. At the same time, the ex-landowners continually promoted these desires to the governments of the day through the submissions of briefs outlining their resettlement proposals. This advocacy was done with the intent to right what they perceived as a wrong committed against them.

After the Parks Canada decision in 1996 not to include Hecla Island as part of a national lowlands park, the Province decided to repopulate Hecla Island as it was anticipated that bringing people back to Hecla would help to alleviate economic problems and promote tourism on the Island.

Departmental studies and development concepts concerning alternative cottage subdivisions on Hecla Island began to be considered in April 1996. This was an ongoing process that continued into 1997. The alternative chosen was a cottage subdivision on the north shore of the Island.

In 1997, members of the Hecla Ex-landowners Association approached the government of the day with concern that the ex-landowners of Hecla Island were not being given first opportunity to secure cottage lots that the Department was developing in the north shore subdivision. These discussions resulted in a decision by the Province to also develop lots in the Hecla Historic Village. This decision led to the establishment of the Hecla Advisory Committee (HAC) which was to develop a process to accomplish the resettlement of Hecla Island by ex-landowners in a fair and objective manner.

A more detailed review of the history of Hecla Island appears as **Appendix B**.

3.0 Resettlement Information

On September 29, 1997 the Minister of Natural Resources issued a news release outlining an initiative to resettle the Historic Village on Hecla Island. The news release stated that *"former landowners who were residents or long-term seasonal cottagers at the time Hecla Island Provincial Park was established were to be the first Manitobans offered the opportunity to resettle the area"*. Former landowners who were eligible had the option to lease a five-acre lot on the east side of the island, close to the village, for $5,000.

The *Hecla Island Historic Lands Resettlement Information Package* (Information Package) was provided upon request to individuals interested in applying for a lot. The package listed the eligibility criteria; lot location, price and size; building requirements; the allocation process; lease requirements and applicable fees; and an application form and submission requirements to obtain the offered lots. The original package is presented as **Appendix C**.

In addition to the news release and the Information Package, advertisements were placed in the Winnipeg Free Press, the Winnipeg Sun and the Interlake Spectator in early October 1997. The advertisements stated in part, *"...Manitoba Natural Resources is seeking Hecla Island ex-landowners who were either long-term residents or long-term seasonal cottagers at the time Hecla Island Provincial Park was established. Qualified ex-landowners will have an opportunity to resettle the historic village area of Hecla Island. Ex-landowners who entered into a voluntary sale of their properties to a third party and landowners with current private holdings on Hecla Island are not eligible for this opportunity"*.

A summary of the Information Package is presented below:

- The Eligibility Criteria were as follows:
  - The opportunity to lease a lot was available to ex-landowners who owned a residence on Hecla Island in 1969 at the time that Hecla Provincial Park was established, or their spouse, son(s), or daughter(s);
  - The opportunity to lease a lot was also extended to ex-cottagers who owned land on the island;
  - Ex-landowners who entered into a voluntary sale of their property to a third party other than the Province of Manitoba after the park was established, and current landowners on Hecla Island were not eligible;
  - The general intent of the resettlement program was to provide one lot per original Hecla Island family. To accomplish this, each original landowner who owned land at the time the park was established (or the spouse, son, or daughter of that landowner) would be eligible to lease one lot. Where more than one person in an original Hecla Island family was eligible, those persons were to decide who would apply for the one lot that was available to them;
  - In circumstances where more than one landowner was listed on a title, only one lot would be allocated; and

- If more complicated circumstances arose, an eligibility committee composed of ex-landowners and Manitoba Natural Resources staff members were to review the applications and make recommendations to the Minister of Natural Resources as to who was eligible.

- Lots in the Historic Lands subdivision were located on lands previously settled on the eastern shore of Hecla Island in Hecla Provincial Park. The lots were within the Heritage Land Use Category with the majority south of Hecla Village. Additionally, fifteen lots were also made available at the North Shore subdivision should an eligible ex-landowner prefer that location.

- All lots in the Historic Lands subdivision were 5 acres in size. Lot frontages on the road and/or lake were 330 feet except in the section in which the Hecla Village was located where lot widths were 220 feet. Subdivision of lots was not allowed. North Shore lots were 100 feet wide and 150 feet deep (about one-third of an acre).

- The lot price for qualified ex-landowners was $5,000 for either subdivision.

- In the Historic Lands subdivision, one principal residence was allowed on each lot that fronted the road and/or lake. All buildings on the Historic Lands lots were to be subject to design controls (to be developed with the assistance of the Hecla Ex-Landowners Association) that would regulate building size, shape, and style, exterior materials and colour, and types of fencing, sheds, etc. The maximum square footage for the principal residence and outbuildings had yet to be established. Standard principal cottage development guidelines applied to the North Shore subdivision.

- The allocation of lots to eligible ex-landowners or their descendants occurred in three stages:

  Stage 1
  Eligible ex-landowners who wanted a lot that was part of their original land holding that was within the Historic Lands subdivision could choose that lot. Those that rejected this option were relegated to Stage 3.

  Stage 2
  Eligible ex-landowners whose original land holding was not available within the Historic Lands subdivision were able to participate in a draw for their choice of lots that remained in the Historic Lands subdivision at the conclusion of Stage 1, or for any lots that remained from the 15 lots set aside in the North Shore subdivision.

  Stage 3
  Eligible ex-landowners who did not want a part of their original land holding offered in Stage 1 were able to participate in a draw for their choice of lots that remained in the Historic Lands subdivision at the conclusion of Stage 2, or from any lots that remained from the 15 lots set aside in the North Shore subdivision.

- Applications were to be submitted on a prescribed form by eligible persons. A refundable deposit of $500 (money order, certified cheque, or bank draft) was required to accompany the application. Applications were to be postmarked or submitted in person to the Director of Parks and Natural Areas by 4:30pm on October 31, 1997.
- Natural Resources was to notify applicants by November 20, 1997 of their eligibility for a lot. Lots other than those assigned in Stage 1 were to be assigned in a Lot Draw to be held on November 29, 1997 at the Hecla Community Hall. All applicants (other than those in Stage 1) were required to attend the draw or send someone authorized to act in their place. The first applicant drawn in Stage 2 was to have first choice of all remaining lots in the Historic Lands subdivision or lots in the block of 15 lots in the North Shore subdivision. This process was to continue until all eligible applicants in Stage 2 had been drawn. The same procedure was then to apply to Stage 3 applicants. Deposits became non-refundable when an applicant chose a lot.
- For those lot holders in the Historic Lands subdivision, full payment (an additional $4,500) was to be made by successful applicants within 1 year of the draw date. In the case of the North Shore subdivision, full payment was to be made by March 31, 1998.
- Possession and lot development was to occur only after full payment had been made. An annual permit was to be issued at that time. Successful applicants were to construct a dwelling to "lock-up" stage prior to a lease being issued. This was to have occurred before December 31, 2000 for the Historic Lands lots and by December 31, 1999 for the North Shore lots. The lease was to be a standard 21 year renewable lease.
- Lots were not to be assignable (may not be sold) until a dwelling was completed to "lock-up" stage and a lease had been issued.

On September 17, 1997, Cabinet approved that any unallocated lots in the Hecla Historic Village would be held for two years to address appeals, which could have arisen, before they would be made available to the general public at market value.

4.0 Advisory Committees

The legislative authority for advisory committee appointment is contained within the Provincial Parks Act. The following are extracts from the Provincial Parks Act that was in existence in 1997:

- *Section 29(1): The minister may appoint advisory committees to provide advice and recommendations to the minister concerning the administration of one or more provincial parks.*
- *Section 29(2): The minister may determine the terms of reference and the procedures of advisory committees.*

The following are extracts from the Park Activities Regulation (141/96) of the Provincial Parks Act that was in existence in 1997:

- *Section 62(1): Upon application of an owner of a lot, the minister may vary any of the requirements described in Sections 59, 60 and 61 [relating to floor space restrictions on vacation homes and accessory buildings].*
- *Section 62(2): The minister may appoint persons to act as a variance advisory committee with respect to applications under subsection (1).*

In October 1998, Section 62(1) and Section 62(2) were repealed under Park Activities Regulation (182/98) and were replaced by the following:

- *Section 62.1(1): The minister may from time to time establish one or more advisory boards to advise the minister with respect to matters relating to the use of lots in provincial parks, including lots on private land.*
- *Section 62.1(2): Without limiting the generality of subsection (1), an advisory board may consider issues relating to*

  a) conditions that may be imposed on the issuance of site plan permits; and

  b) other issues respecting residential lots and commercial lots in provincial parks.

4.1 HECLA ADVISORY COMMITTEE (HAC)

ALLEGATION

THAT THE HECLA ADVISORY COMMITTEE HAD NEITHER LEGAL FOUNDATION NOR TERMS OF REFERENCE, AND WAS NOT ACCOUNTABLE TO THE DEPARTMENT FOR ITS ACTIONS.

Although the HAC commenced meeting as a committee in the fall of 1997, members of this committee and other ex-landowners met prior to this date. The membership of the HAC was comprised of three ex-landowners and three Department staff. The HAC was to determine eligibility criteria and review applications against those criteria.

Findings

- In April 1997 Cabinet approved that the Department *"... work with ex-landowners and private landowners on a cottaging/development package that would address their concerns prior to initializing a public consultation process".*
- We were informed that the ex-landowners provided the names of persons to serve on the HAC and that an Assistant Deputy Minister of the Department, and the Director of Parks, conferred with the Minister of the day and confirmed the HAC membership. No specific criteria were used to select members other than the fact that the selected individuals were part of a group that was interested in resettlement.
- No documentation was available for our review to officially confirm approval of the HAC membership and the HAC terms of reference.

- The Minister of the day confirmed that no formal legal powers were given to the HAC and that the HAC existed to serve in an advisory role.
- A March 1998 Department memo stated that in recognition of the committee work of the ex-landowner members of the HAC, the Department agreed to forgo their first year of land rental fees for their new lots. One ex-landowner member was not a leaseholder of any Hecla Historic Village cottage lot and the credit for that land rental fee was assigned to a relative who was a leaseholder.
- Our understanding is that the HAC has been disbanded.

Conclusion

- *The HAC was not formally established in documentation under Section 29(1) and Section 29(2) of the Provincial Parks Act, and therefore with no approved terms of reference, the HAC operated as it saw fit.*

4.2 THE HECLA HISTORIC VILLAGE ASSOCIATION

ALLEGATION

THAT THE EXECUTIVE OF THE HECLA HISTORIC VILLAGE ASSOCIATION, ACTING AS AN ADVISORY COMMITTEE, HAS NEITHER LEGAL FOUNDATION NOR TERMS OF REFERENCE, AND IS NOT ACCOUNTABLE TO THE DEPARTMENT FOR ITS ACTIONS.

Subsequent to their role in the determination of eligibility, the ex-landowner members of the HAC volunteered to assist the Department by sitting as a committee to review, make comment and issue instructions with respect to building applications and/or modifications to existing or new structures. Historical and architectural design guidelines were required for structures in the Hecla Historic Village.

Findings

- No documentation was available for our review to confirm the official establishment by the Province of this advisory group.
- This advisory group is operating without formal terms of reference, and is making recommendations that impact the structures that are on leased and private lands on Hecla Island.
- This advisory group was referenced in a 1999 Province of Manitoba lease agreement for Hecla Island as follows (a copy of this lease is presented in **Appendix D**):

> *"The lessee shall construct and maintain any residences and other buildings and development on the lot in a manner that complies, to the satisfaction of the Crown, with the guidelines as specified in the 'Hecla Historic Lands Design Guidelines' published for Manitoba Natural Resources, a copy of which has been provided to the Lessee. The Lessee shall also complete any work, to the satisfaction of the Crown, that may be specified from time-to-time in writing by the Hecla Village Committee and is approved by the Director of Parks and Natural Areas Branch."*

- The ex-landowner members of the HAC worked with the Department evaluating the proposals for the creation of the Hecla Historic Lands Design Guidelines and were involved in the selection of the architectural company which created the guidelines. The architect was selected in early 1998.
- Prior to a revision in October 1998, Sections 62(1) and 62(2) of the Park Activities Regulation allowed the minister to appoint persons to act as a variance advisory committee that could advise only on floor space restrictions on vacation homes and accessory buildings. In October 1998, the Regulation was revised to allow the minister to establish advisory boards to advise him with respect to matters relating to the use of lots in provincial parks, including lots on private land. These matters included conditions that could be imposed on the issuance of site plan permits and other issues respecting lots and commercial lots in provincial parks.
- This committee, comprised of the ex-landowner members of the HAC, began to review proposed building plans for structures in the Hecla Historic Village in the summer of 1998, prior to the revision noted above. At this time, these reviews were carried out under the letterhead of the Hecla Village Advisory Committee.
- On July 17, 1999 at a meeting of the Historic Village lot holders, the ex-landowner members of the HAC were also elected as the executive of the newly formed Hecla Historic Village Association. This executive continues to operate as an advisory group to assist lot holders in interpreting the Historic Village building guidelines and in the processing of building permit applications.

Conclusions

- *This advisory group has not been formally established in documentation under Section 29(1) and Section 29(2) of the Provincial Parks Act and Section 62.1(1) of the Park Activities Regulation.*
- *By reviewing, commenting on, and issuing instructions with respect to building applications and/or modifications to existing structures, prior to October 1998, the ex-landowner members of the HAC had been acting beyond the scope of a variance advisory committee as allowed by the then existing Regulation.*

5.0 Lot Acquisition

ALLEGATION

THAT THE RULES AND PROCEDURES RELATING TO ELIGIBILITY TO ACQUIRE A LOT IN THE HECLA HISTORIC VILLAGE COTTAGE SUBDIVISION WERE ADMINISTERED INEQUITABLY.

5.1 APPLICATION PROCESS

In order to start the process of securing one of the 65 available lots (50 lots in the Hecla Historical Village and 15 available North Shore lots, if preferred), those individuals who believed they were eligible were required to submit the Hecla Island Historic Lands Application Form (Application Form) to the Department. The Information Package supplied with this application form stated that the application had to be postmarked or submitted in person to the Department no later than 4:30pm on October 31, 1997.

A copy of the Application Form is presented in **Appendix C**. This form provided the Department with the name, address, and contact number(s) for the individual(s) applying. The applicant was to indicate whether they were an original landowner or the spouse, son or daughter of an original landowner. The form also provided a space to indicate the legal description of the applicant's original land holdings.

There was also a section on this form where the applicant was to indicate their preference for a specific lot and, if that lot was not available, a second choice. If the applicant's original land holding was available then the applicant was entitled to that lot. However, if the applicant chose not to take that particular lot they were to indicate as such and acknowledge they would be subject to the Stage 3 draw. If the applicant's original land holding was not available then the applicant could indicate their preference for a lot in either the Historic Lands subdivision or the North Shore subdivision. In this situation the applicant would be subject to the Stage 2 draw.

The application must have been accompanied by a certified cheque, bank draft or money order for $500.

Findings

- No formal notification process to those who may have been eligible took place. The Department believed that because of the news release, newspaper advertisements, and that the community was tightly knit, people would become aware of the announcement and would contact them.
- The Application Form was lacking in detail and substance. There was no location on the Application Form to record the date the application was made, no signature block and no witness requirements. Application forms were not pre-numbered to ensure that all applications received were reviewed.
- The Department confirmed that they did not independently verify that those individuals applying for lots were in fact the purported applicants. Department procedures did not involve authenticating that the applicants

submitting applications were actually those whose names were on the application form.

- The Department did not take the required care to record the time and date of receipt of each and every application to ensure that the process was administered equitably. The recording of the date and time of the receipt of these application forms, by the Department, was inconsistently performed. In some cases, recording was by date stamp on the envelope, in others it was hand recorded on the envelope, and in 9 instances there was no indication of date or time of receipt at all. In one of those instances, it was established that the Application Form was received by the Department on November 29, 1997, the date of the draw, and a month after the stated cutoff date. In another situation, an application was recorded in handwriting as being received subsequent to the October 31, 1997 deadline date. All the above applications were included in the draw(s).

- Based on the documentation obtained from the Department, 48 applications for the 50 available lots in the Hecla Historic Village and the 15 available North Shore lots were received.

- Of the 48 applications received by the Department for the November 29, 1997 draws for lots, 12 applications were rejected and 36 applications were approved resulting in the awarding of 36 lots (25 in Stage 1, 10 in Stage 2, and 1 in Stage 3).

- On September 17, 1997, Cabinet approved that any lots in the Hecla Historic Village that were not allocated in the above process were to be held for two years, to address appeals, before making those lots available to the general public at market value. However, during this two year period, an additional 19 new applications were reviewed and considered by the HAC. Of those 19 applications received in the two year period following the November 29, 1997 draws, 6 applications were rejected and 13 applications were approved resulting in the awarding of 13 more lots. None of these applications were for appeals as stipulated by Cabinet, but instead were received from individuals who believed they had an entitlement under the eligibility criteria. Our interviews confirmed that the Minister of the day subsequently gave Department approval for new applications to be considered for lot allocation. However, there was no public announcement that communicated that new applications received after November 29, 1997 would be accepted and considered for eligibility.

- Overall, of the 65 available lots, 49 lots were eventually allocated. Three lots in the Hecla Historic Village and 13 North Shore lots were unclaimed and were made available in subsequent public draws. One of the unclaimed lots in the Hecla Historic Village remains unleased by the Province.

Conclusion

- *The administration of applications and communications of the process were not well-managed or controlled. The process was not fair, open or transparent.*

5.2 APPLICATION OF ELIGIBILITY CRITERIA

The key component with respect to the government's announcement on the resettlement of Hecla Island was eligibility. Eligibility is defined as "qualified or entitled to be chosen". Entitlement was the basis on which individuals ultimately were able to apply for and secure a lot.

Based on the Minister's news release, the Information Package and newspaper advertisements, we have considered the information contained therein as the base line for our review of the eligibility criteria. Our decision is supported by Department documentation of February 2000 that stated, *"The Minister with his news release and associated information packages confirmed the eligibility criteria".* (The eligibility criteria are set out on page 15 and in **Appendix C** of this report.)

The Department indicated that they assessed each application and confirmed the application to be either eligible or ineligible. Lot lease files did not contain any documentation of the Department's assessment of eligibility other than a letter from the Director of Parks to the applicant advising that they had been deemed eligible for a lot. Rejected applications were returned to applicants with a letter from the Director of Parks giving the reason for rejection. We reviewed the application of eligibility criteria on an application by application basis. We then benchmarked the decisions made by the Department on each application to the eligibility criteria that was in the public domain.

Findings

- In a Department submission to Cabinet in September 1997, it stated, *"Eligibility criteria, allocation process and a five acre lot design on the heritage lands have also been agreed upon".* We have not located any documentation or submission that indicates that Cabinet was advised, had discussed or had approved what the actual eligibility criteria would be, and how the criteria would be applied.
- Interviews and documentation indicated that the Department used the Hecla Property Inventory Book, known as the "black book", as a main source to confirm eligibility. The "black book" contained information on holdings that were expropriated, sold by mutual consent, abandoned, or remained in the possession of the landowners. This "black book" was originally created in 1976 by an employee of the Province of Manitoba.
- The Department indicated that by using Department records, including the "black book", maps, aerial photographs of Hecla Island in 1969, Land Titles certificates, as well as consultations with the ex-landowner members, entitlement was determined by the HAC.
- We determined that no minutes of any HAC meetings were kept. Further, the Department did not record the rationale for any decisions regarding criteria development and their application.
- A review of Land Management Services records has determined that a significant number of families had left the Island and abandoned their properties prior to Park establishment.

- During the course of our investigation we explored the definition of eligibility with the members of the HAC. There were various interpretations as to whether residency, as well as ownership, at the time of expropriation was a requirement for eligibility. Some of these interpretations are as follows:
    - A person who had owned land, had been expropriated, and was resident at the time of expropriation was eligible;
    - A person had to have been a landholder at the time of expropriation and had to have owned property, paid taxes and been expropriated;
    - A person who paid taxes in 1969/70, was eligible;
    - The first priority for a lot was to be given to a landowner or a descendant of the landowner who had last inhabited that particular lot. In this case, only one lot per family was allowed. The family was to decide who was to apply for the lot or if they would apply in partnership;
    - To be eligible, a person had to be resident on the Island at the time of expropriation in 1969;
    - A person had to be living on the Island, and not have "abandoned the island totally"; and
    - A person who had long since left the Island prior to 1969 but who was still paying taxes on their property was not considered eligible.

Figure 1 illustrates resultant anomalies associated with the application of eligibility criteria to 21 out of 49, or 42%, of the actual allocated lots. We identified the anomalies by comparing each application for entitlement to the eligibility criteria. In some cases we encountered more than one anomaly per lot.

FIGURE 1

Summary of Anomalies Associated with Allocated Lots in the Hecla Historic Village and the North Shore Subdivision**

Anomaly / Incident	Residence But No Land	Land But No Residence	Allocation to Other Than Spouse, Son or Daughter	More Than One Lot Allocated From One Original Land Holding	No Family Agreement on Application for the One Lot Available	Not Living on Hecla at Time of Expropriation *	Residence Vacant at Time of Expropriation *
1						X	X
2						X	X
3		X				X	
4						X	X
5						X	X
6				X			
7						X	X
8						X	X
9				X			
10						X	X
11						X	X
12						X	X
13	X		X	X		X	X
14				X		X	X
15	X			X		X	X
16						X	X
17	X		X	X		X	X
18	X		X	X		X	X
19	X			X			
20						X	X
21					X		
Totals	**5**	**1**	**3**	**8**	**1**	**17**	**16**

* Residency at the time of expropriation was stated as a criterion for eligibility in the Minister's news release. However, during the course of our interviews we obtained contradictory information as to whether this criterion was used to determine eligibility.

** An anomaly is an existing circumstance which is contrary to the eligibility criteria.

X This type of anomaly occurred.

- The lots to which the 21 anomalies apply were allocated in the following stages:
  - 9 lots in Stage 1;
  - 5 lots in Stage 2; and
  - 7 lots in the period November 30, 1997 through to December 31, 1999.
- Entitlement to lots was granted to individuals that had:
  - held vacant property;
  - not owned land;
  - long abandoned their properties;
  - continued to reside on Hecla Island;
  - not owned a residence; and
  - owned a residence on a multiple resident property.

FIGURE 1

Summary of Anomalies Associated with Allocated Lots in the Hecla Historic Village and the North Shore Subdivision**

Anomaly / Incident	Residence But No Land	Land But No Residence	Allocation to Other Than Spouse, Son or Daughter	More Than One Lot Allocated From One Original Land Holding	No Family Agreement on Application for the One Lot Available	Not Living on Hecla at Time of Expropriation *	Residence Vacant at Time of Expropriation *
1						X	X
2						X	X
3		X				X	
4						X	X
5						X	X
6				X			
7						X	X
8						X	X
9				X			
10						X	X
11						X	X
12						X	X
13	X		X	X		X	X
14				X		X	X
15	X			X		X	X
16						X	X
17	X		X	X		X	X
18	X		X	X		X	X
19	X			X			
20						X	X
21					X		
Totals	**5**	**1**	**3**	**8**	**1**	**17**	**16**

* Residency at the time of expropriation was stated as a criterion for eligibility in the Minister's news release. However, during the course of our interviews we obtained contradictory information as to whether this criterion was used to determine eligibility.

** An anomaly is an existing circumstance which is contrary to the eligibility criteria.

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  - 7 lots in the period November 30, 1997 through to December 31, 1999.
- Entitlement to lots was granted to individuals that had:
  - held vacant property;
  - not owned land;
  - long abandoned their properties;
  - continued to reside on Hecla Island;
  - not owned a residence; and
  - owned a residence on a multiple resident property.

Figure 2 illustrates some examples of how residency criteria were inconsistently applied to determine entitlement.

FIGURE 2

Inconsistent Application of Residency Criteria

Criteria	Situation	Decision	Criteria Followed and Explanation
1. Ex-landowners who owned a residence on Hecla Island in 1969 at the time that Hecla Provincial Park was established, or their spouse, son(s), or daughter(s) would be eligible to lease a lot.	a) An application for a lot was made by former landowners. There had not been a residence on this lot. Department lease file indicated awareness of this situation.	a) Application accepted and a lot was allocated.	Criteria followed: **NO** No residence on land holding. In another case an application was denied because there was no residence on land holding.
	b) An application for a lot was made by the daughter of a former residence owner whose home was located on the former residence owner's brother-in-law's land. Department lease file indicated awareness of this situation.	b) Application accepted and a lot was allocated.	Criteria followed: **NO** There was no land ownership. Another lot had also been allocated for the property on which the residence was located.
	c) An application for a lot was made jointly by two daughters of a former residence owner. The residence was located on the property of the owners' parents.	c) Application accepted and a lot was allocated.	Criteria followed: **NO** There was no land ownership. Another lot had also been allocated for the property on which the residence was located.
	d) In three separate applications individuals who were the grandchildren of former landowners, applied for a lot.	d) All applications accepted and lots allocated.	Criteria followed: **NO** Criteria specified spouse, son or daughter.
2. Where more than one person in an original Hecla Island family is eligible, those persons must decide who will apply for the one lot that is available to them (one lot per family).	a) Two sons of a former landowner made separate applications for a lot. There was no agreement between the two sons.	a) One son was granted a lot; the other son was not granted a lot.	Criteria followed: **NO** Decision as to who was granted the lot, made by HAC. In other cases the applications were returned.
	b) Four applications for lots were made by four descendants of the original landowner based on the fact that there were four residences on the original property.	b) Applications accepted and four lots were allocated.	Criteria followed: **NO** Three of the four lot allocations were based on residence ownership and not on land ownership.
3. Non-stated criteria.	An application for a lot was made by the daughter of a former owner of a private club on the Island.	Application denied based on the criterion that only those landowners who had a long-term residence on Hecla were eligible. This non-stated criterion ruled out private clubs, churches and Local Government Districts from eligibility consideration.	Criteria followed: **NO** The reason for rejection was not a criterion.

- Publicly communicated criteria noted that ex-landowners who entered into a voluntary sale of their property to a third party other than the Province of Manitoba after the Park was established, and current landowners on Hecla Island were not eligible to obtain a lease for a lot. Interviews and documentation indicated that the rationale for these exclusionary elements of the criteria were as follows:
  - To restore people to the Island who had previously lived there or were descendants of those who lived there, and who wanted to establish a residence;
  - If a landowner had not been forced off the Island, continued to enjoy property, had title to property, then they had not lost anything. Furthermore, it was thought that people who had sold willingly to a third party after Park establishment, were not eligible, as they had chosen to leave;

Figure 2 illustrates some examples of how residency criteria were inconsistently applied to determine entitlement.

FIGURE 2

Inconsistent Application of Residency Criteria

Criteria	Situation	Decision	Criteria Followed and Explanation
1. Ex-landowners who owned a residence on Hecla Island in 1969 at the time that Hecla Provincial Park was established, or their spouse, son(s), or daughter(s) would be eligible to lease a lot.	a) An application for a lot was made by former landowners. There had not been a residence on this lot. Department lease file indicated awareness of this situation.	a) Application accepted and a lot was allocated.	Criteria followed: **NO** No residence on land holding. In another case an application was denied because there was no residence on land holding.
	b) An application for a lot was made by the daughter of a former residence owner whose home was located on the former residence owner's brother-in-law's land. Department lease file indicated awareness of this situation.	b) Application accepted and a lot was allocated.	Criteria followed: **NO** There was no land ownership. Another lot had also been allocated for the property on which the residence was located.
	c) An application for a lot was made jointly by two daughters of a former residence owner. The residence was located on the property of the owners' parents.	c) Application accepted and a lot was allocated.	Criteria followed: **NO** There was no land ownership. Another lot had also been allocated for the property on which the residence was located.
	d) In three separate applications individuals who were the grandchildren of former landowners, applied for a lot.	d) All applications accepted and lots allocated.	Criteria followed: **NO** Criteria specified spouse, son or daughter.
2. Where more than one person in an original Hecla Island family is eligible, those persons must decide who will apply for the one lot that is available to them (one lot per family).	a) Two sons of a former landowner made separate applications for a lot. There was no agreement between the two sons.	a) One son was granted a lot; the other son was not granted a lot.	Criteria followed: **NO** Decision as to who was granted the lot, made by HAC. In other cases the applications were returned.
	b) Four applications for lots were made by four descendants of the original landowner based on the fact that there were four residences on the original property.	b) Applications accepted and four lots were allocated.	Criteria followed: **NO** Three of the four lot allocations were based on residence ownership and not on land ownership.
3. Non-stated criteria.	An application for a lot was made by the daughter of a former owner of a private club on the Island.	Application denied based on the criterion that only those landowners who had a long-term residence on Hecla were eligible. This non-stated criterion ruled out private clubs, churches and Local Government Districts from eligibility consideration.	Criteria followed: **NO** The reason for rejection was not a criterion.

- Publicly communicated criteria noted that ex-landowners who entered into a voluntary sale of their property to a third party other than the Province of Manitoba after the Park was established, and current landowners on Hecla Island were not eligible to obtain a lease for a lot. Interviews and documentation indicated that the rationale for these exclusionary elements of the criteria were as follows:
  - To restore people to the Island who had previously lived there or were descendants of those who lived there, and who wanted to establish a residence;
  - If a landowner had not been forced off the Island, continued to enjoy property, had title to property, then they had not lost anything. Furthermore, it was thought that people who had sold willingly to a third party after Park establishment, were not eligible, as they had chosen to leave;

- Landowners who already had property on the Island could develop on that property and it was not fair to give them further opportunities to expand on the Island; and
- There was no need to include people in the resettlement process who were already on the Island because they did not need to resettle, they were already there.

Conclusions

- *There was no consistency of understanding by the members of the HAC as to how the eligibility criteria were to be applied. Their interpretation and subsequent application of these criteria for entitlement were inconsistent, did not always adhere to the stated criteria, and as a result not all applicants were treated equitably. These changes to the stated criteria were never publicly communicated. Without being open and transparent regarding eligibility criteria, the process was not fair.*
- *Department officials either knew or should have known that the process used for eligibility was not fair, open or transparent.*

5.3 HECLA HISTORIC VILLAGE PUBLIC DRAW

After the initial allocation of lots in November 1997, and to the end of the two-year appeal period, at December 31, 1999, 13 more lots were allocated leaving only 3 lots available for a public draw. Two of these lots were to be sold for $25,000 each. The third lot was to be sold for $20,000 due to its inferior condition requiring an additional investment to make it useable.

Findings

- Applications for the public draw, held May 13, 2000, were received from seven individuals accompanied by the required deposit of $500. Of these applications four were received from individuals who were related as brothers and their wives. This is contrasted by another situation where a husband and wife applied jointly on one application.
- As a result of this draw, the individuals related as brothers and their wives, were drawn for the three available lots. Subsequently, these individuals chose to lease two of these lots. The remaining lot is vacant as of this date.
- In May 2000, the individual who had applied jointly with his spouse filed a letter of complaint. He stated that he believed the process followed by the Department and the results of the draw were not fair.
- In a letter of response to this complaint the Minister of Conservation stated, *"If a full deposit is made under a given name, then the name is eligible to be drawn. Manitoba Conservation does not define what constitutes a single family unit nor limit who applies for a draw".*

Conclusion

- *Although the Department defined family in the public Information Package, in terms of the resettlement of the Hecla Historic Village, they did not define family when it came to the public draw. However, in the absence of a definition of family it is reasonable to conclude that any individual may apply and hence the process was fair.*

5.4 ASSIGNMENT OF LOTS

As stated in the Information Package, entitled individuals were able to lease lots and subsequently assign (transfer) their lease to another individual once a dwelling was on the lot and was completed to lock-up stage.

Findings

- Hecla Historic Village lots could be acquired for $5,000 by entitled individuals. The Department provided the HAC members with a listing of ex-landowners who were previously expropriated from Hecla Island. From this listing, and combined with additional information, the HAC members had knowledge of who could be considered entitled to receive a lease under the eligibility criteria. This information of who was entitled was not part of the Information Package.
- Of the 50 lots in the Hecla Historic Village, the leases for 21 (42%) of the lots were assigned from individuals awarded lots to others. All 21 leases were acquired for $5,000 and of these:
    - Eight leases were transferred appropriately to direct descendents who under the eligibility criteria would not have been entitled to a lease;
    - Eight leases were transferred from entitled individuals to unrelated individuals who under the eligibility criteria would not have been entitled to a lease. These transfers occurred once the property was at lock-up stage as allowed under the provisions of the Information Package. However, one of these transfers occurred under inappropriate circumstances based on a form bearing a false signature;
    - One lease was transferred from an entitled individual to another individual despite the fact that the lock-up stage had not been achieved. This was contrary to the provisions of the Information Package; and
    - Four leases were transferred from entitled individuals to ex-landowner members of the HAC or individuals related to the ex-landowner members of the HAC, who under the eligibility criteria would not have been entitled to those leases. These individuals acquired the leases under inappropriate circumstances based on forms bearing false signatures.
- As noted in the previous point, five leases were transferred on the basis of falsely signed documents. Had these leases not been acquired for $5,000

through the assignment process, they would have been included in a public draw and would have cost the individuals obtaining these leases an additional $20,000 per lease. A person obtaining a lot through the public draw would have had to pay $25,000.

- The forms bearing false signatures included Department forms required for the acquisition or transfer of a vacation home lot:
  - the Hecla Island Historic Lands Resettlement Application Form (Appendix C);
  - the Department Assignment Form (Appendix G);
  - the Application For A Vacation Home Lease Form (Appendix E); and
  - the Province of Manitoba Lease of a Vacation Home Lot (Appendix D).
- During the course of our investigation we were supplied with two additional sets of Department forms, related to the acquisition of two lots, which had been backdated. These forms have not been submitted to the Department but have been used by the individuals involved to justify their actions.
- The Department accepted documents at face value and acted upon them. At no time did the Department independently verify the veracity of the documents.
- The individuals involved in the circumstances described above have admitted to their actions.

Conclusions

- *Some of the ex-landowner members of the HAC inappropriately benefited financially from the use of falsely signed documents and had inside information that enabled them to circumvent the rules in place. We have referred this matter to the Deputy Attorney General of Manitoba with a recommendation that the matter be referred to police for potential criminal investigation.*
- *The process for the assignment of lots was not fair, open or transparent.*

5.5 PROBLEMATIC PROPERTY ACQUISITION

Findings

- Thirty application forms were submitted to the Department for the draw held on August 10, 1998, for the former Golf Pro's House.
- The draw was held in the Department's offices in Winnipeg and was witnessed by two members of the Department and an ex-landowner member of the HAC. None of the applicants were in attendance at this draw.
- Four application forms for the draw, were submitted inappropriately in the names of individuals who in fact did not prepare or submit the

application forms themselves. One of these four applications was drawn first and the house was eventually purchased under this applicant's name without the knowledge of the applicant for $7,500. This application form had been submitted by an individual who subsequently provided falsely signed documentation to the Department transferring ownership of this residence to himself.

- The Department accepted documents at face value and acted upon them. At no time did the Department independently verify the veracity of the documents.
- The individuals involved in the circumstances described above have admitted to their actions.

Conclusions

- *The draw for the former Golf Pro's House was not open to the public and therefore not transparent as to its process. No independent verification of this process took place.*
- *One individual inappropriately obtained a financial benefit by acquiring a residence for a price less than what it would have cost to build such a house. This individual did so through the use of falsely signed documents. We have referred this matter to the Deputy Attorney General of Manitoba with a recommendation that the matter be referred to police for potential criminal investigation.*

6.0 Pricing of Lots and Houses

ALLEGATION

THAT THE DEPARTMENT LEASED VACATION HOME LOTS AND SOLD HOUSES ON HECLA ISLAND FOR AMOUNTS CONSIDERABLY BELOW FAIR MARKET VALUE.

6.1 PRICING OF LOTS

Cabinet made the determination as to the price for the leases on the lots in the Hecla Historic Village. They decided that this price would assist in righting a long-standing wrong while at the same time making it attractive for ex-landowners to resettle the Island, in particular the Historic Village.

Findings

- An appraisal company contracted by the Department, provided appraisal reports on the market value of lots in the North Shore subdivision and the Historic Village subdivision (East Shore) in August 1997. Both reports estimated the market value of lots in either subdivision as at July 22, 1997, at $38,000.
- The appraisal company estimated that the lease value of lots in the North Shore and Hecla Village subdivisions to be worth approximately $30,000.

Reference was made to a further reduction in value to accommodate the Department's determination to transfer all lots in the North Shore subdivision within that current season. Based upon this a value of $20,000 was arrived at.

- In September 1997, Cabinet approved that the Department release lots in either the Historic Village or the North Shore subdivisions to ex-landowners at a cost of $5,000 per lot. The ex-landowners had indicated that anything higher than $5,000 would discourage their participation in the resettlement process, and that this option would be acceptable to most ex-landowners and would facilitate the release of the majority of the North Shore lots to the general public. The $5,000 price was also an acknowledgement that in order to realize the development potential of Hecla Island, resettlement must occur.
- The resettlement of the ex-landowners was noted as not being associated with generating revenue, but rather addressing an issue that had been festering for thirty years. The Department had suggested that the land had been unfairly expropriated and that a price which represented a significant discount from appraised market values was fair and reasonable.
- As detailed above (Section 5.3), the price for the two lots secured in the Hecla Historic Village public draw held in May 2000 was $25,000 per lot.

Conclusion

- *The overall pricing of lots well below market value was a public policy decision approved by Cabinet and was seen as an important element in repopulating Hecla Island and stimulating its economy.*

6.2 PRICING OF HOUSES

Subsequent to expropriation, many of the houses of the ex-landowners on Hecla Island were moved or demolished. A number of the remaining houses were used by the Department and Venture Manitoba Tours Ltd. for staff housing. In 1997, there were nine habitable houses remaining from the time of expropriation on lots in the Historic Village.

Findings

- In November 1997, the Department prepared *"Historic Houses on Hecla Island, A Discussion Paper"*. This paper detailed an inventory of both habitable and unrestoreable houses still existing on Hecla Island with recommendations as to their disposition.
- One of the recommendations was that habitable houses on lots to be released as part of the Hecla Historic Village resettlement would have to be sold as part of the lot. The recommendation noted that the Ex-Landowners Association had recommended that the value of all habitable houses be that which the ex-landowners were paid for the houses at the time of expropriation.
- The Director of Parks had authority over the pricing of house sales at Hecla Island.

- Nine houses situated on lots allocated in the draws were sold to lot holders. Six of the 9 houses were sold to lot holders for the price that had been paid at expropriation. The following are the circumstances for the other three situations:

    - One house was sold to an ex-landowner member of the HAC for $3,000 less than the price that had been paid at expropriation. This individual had been living in this house since expropriation on a lease back arrangement with the Department. In the spring of 1998, the HAC member provided a handwritten note to the Department stating that he had expended $3,000 in maintenance and improvements for the house over an indeterminate time period. No receipts for these expenditures were provided. We noted in an appendix to "Historic Houses on Hecla Island, A Discussion Paper", dated October 28, 1997, that the Department had made cursory inspections of selected Hecla Island houses. No inspection was completed for this house at that time.

    - Another house was offered to a lot holder for the expropriated price of $7,357. The lot holder chose not to accept this offer. Subsequently, this house was sold to another lot holder, a relative of an ex-landowner member of the HAC, for the sum of $1, with the rationale that the house was in very poor condition. It should be noted that *"Historic Houses on Hecla Island, A Discussion Paper"* described the house as being in fair to good condition. The house had been offered to Venture Manitoba Tours Ltd. in 1995 by the Deputy Minister of the day.

    - Another property (lot and house) which had not been expropriated had been sold to a third party for $80,000 in 1981. The Province reacquired this property in the mid-1990s and had been using the house for staff quarters. In 1997, the house on this property was estimated to have a market value of $50,000. This house was acquired through assignment by a relative of an ex-landowner member of the HAC for $11,260.

- Between 1990 and 1997, in excess of $40,000 was spent by the Department for maintenance and repairs on 6 of the 9 houses. Additionally, between 1989 and 1997, Venture Manitoba Tours Ltd. spent approximately $80,000 for renovations to the other 3 houses. Included in this figure was approximately $50,000 for an addition and renovations to a house that had been leased to the resort manager of Venture Manitoba Tours Ltd. This house was sold to a lot holder, a relative of an ex-landowner member of the HAC, for the expropriation price of $4,270.

- For all 9 house transactions as discussed above, we were unable to locate any documentation detailing the rationale for the selling prices of these houses.

- An Agreement for Purchase and Sale of Buildings in Hecla/Grindstone Provincial Park form was required to be signed by the Province and the purchaser for all houses sold in the Hecla/Grindstone Provincial Park.

The Department was able to provide signed agreements for 8 of the 9 house sales that occurred. No signed agreement was made available to us for the sale of the Golf Pro's House. The Director of Parks or his designate signed the 8 available agreements.

Conclusions

- *Nine ex-landowners were able to acquire housing for their leased lots at considerably below fair market value. The ex-landowner members of the HAC, as the executive of the Ex-Landowners Association, were able to influence the decision making with respect to the sale prices of these houses.*
- *These transactions were approved under the authority of the Director of Parks. The Department failed to ensure that appropriate documentation was maintained as a means of demonstrating that this process could withstand public scrutiny.*
- *We believe that the special duty of care owed to the citizens of Manitoba in the management of public resources was not honoured in these cases.*

7.0 Conflict of Interest

7.1 FORMER DEPUTY MINISTER AND DEPARTMENT STAFF

ALLEGATIONS

THAT A FORMER DEPUTY MINISTER OF THE DEPARTMENT PLACED HIMSELF IN A CONFLICT OF INTEREST SITUATION.

THAT STAFF OF THE DEPARTMENT PLACED THEMSELVES IN A CONFLICT OF INTEREST SITUATION.

Under the general provisions of the Conflict of Interest Guidelines for the Province of Manitoba, effective 1984, it states:

"Employees shall not engage directly or indirectly in any personal business transaction or private arrangement for personal profit which accrues from or is based upon their official position or authority or upon confidential or non-public information which they gain by reason of such position of authority."

"Employees shall not act in any official matter where there is a personal interest which is incompatible with an unbiased exercise of official judgement."

Findings

- In early 1997, the Deputy Minister of the Department officially declared a conflict of interest with respect to the resettlement of Hecla Island.

  The Minister of the day confirmed the receipt of this conflict of interest declaration by the Deputy Minister, and issued instructions that an Assistant Deputy Minister and the Director of Parks be responsible to report to him on issues surrounding the resettlement project.

- In August 1997, a longtime staff member of the Department formally declared a conflict of interest after it became apparent that a family member may have been eligible for a lot in the Hecla Historic Village. The staff member of the Department noted that should the family member be determined to be eligible, the family member would act upon that eligibility.
- In an October 1997 memo, an Assistant Deputy Minister of the Department wrote to the Director with respect to the staff member's conflict of interest declaration. This memo stated:

  > *"The staff member should not be involved in any issues/discussions related to his family's acquisition of property.*
  >
  > *The staff member should refrain from attending any meetings or discussions concerning eligibility or pricing relating to the resettlement proposal.*
  >
  > *It is difficult to anticipate all of the situations that may present potential for an actual or perceived conflict of interest and it would probably be advisable therefore to point out to the staff member that the responsibility for avoiding conflict of interest is solely his. Should any controversial or questionable issues arise we will respond to them at the time."*

- Interviews with Department staff and a review of documentation related to the above staff member, noted the following:
  - Based on an interview with this staff member, he was aware of the 1997 memo and the instructions contained therein;
  - The staff member served as a resource to the Director of Parks in the determination of eligibility;
  - In one situation he provided written comment on eligibility to a staff member other than the Director of Parks; and
  - In one further situation the staff member acted as a witness for a written declaration from an individual outlining this individual's rationale for requesting four entitlements for lots based on four individual residences being located on one lot.

Conclusions

- *The former Deputy Minister declared his conflict of interest and formally separated himself from the decision making on transactions associated with the resettlement of Hecla Island. We did not find any instances where the Deputy Minister breached his conflict of interest declaration.*
- *A Department staff member in a conflict of interest situation acted contrary to the instructions of the Department by being involved in the determination of some eligibility.*

7.2 EX-LANDOWNER MEMBERS OF THE HAC

ALLEGATION

THAT THE EX-LANDOWNER MEMBERS OF THE HECLA ADVISORY COMMITTEE PLACED THEMSELVES IN A CONFLICT OF INTEREST SITUATION WITH RESPECT TO THE DETERMINATION OF ENTITLEMENT FOR LOTS IN THE HECLA HISTORIC VILLAGE.

Findings

- There was no requirement from the Province that conflict of interest declarations be provided by ex-landowner members of the HAC regarding their own acquisition of lots or property or the acquisition of lots or property by their family members.
- The ex-landowner members of the HAC were involved in the acquisition of lots in the Hecla Historic Village, while at the same time being involved in the entitlement and eligibility processes.
- A former Department staff member advised that the Department turned to the ex-landowners on the HAC to develop the criteria. In letters dated June and August 1997, in response to requests from the Department, the Ex-Landowners Association detailed their recommended eligibility criteria and process for lot allocation. These recommendations ultimately became the basis for the final criteria and lot allocation process utilized by the Department. The ex-landowner members of the HAC had a significant influence on decisions relating to the eligibility criteria and ultimately the decisions on who would receive entitlements.
- Hecla Historic Village lots could be acquired for $5,000 by entitled individuals. The Department had supplied a list of Hecla pre-park landowners to the ex-landowner members of the HAC. We reviewed this document and observed a Department notation on the document which read, *"ex-landowners evaluation of eligibility"*. From this listing, and combined with additional information, the ex-landowner members of the HAC had knowledge of who could be considered entitled to receive a lease under the eligibility criteria. This information of who could be entitled was not part of the Information Package, and was therefore not available to the public.
- As noted above, the ex-landowner members of the HAC recommended eligibility criteria and a process for lot allocation that ultimately became the basis for the final criteria and lot allocation process utilized by the Department. Although the Director of Parks indicated that he made the final decisions as to eligibility, one of the ex-landowner members of the HAC when asked whether the Department ever said no to a recommendation made by them, answered, *"Not that I recall, no. I don't think so"*.

Conclusions

- *By agreeing to serve on the HAC, the ex-landowner members of the HAC placed themselves in a conflict of interest situation. Unfortunately, they did not take steps to mitigate this conflict so that a fair, open and transparent process could take place.*
- *We believe that certain ex-landowner members of the HAC took advantage of their position and used their access to detailed information to inappropriately benefit themselves or their families.*

7.3 DESIGN CONTROLS

ALLEGATION

THAT THE EX-LANDOWNER EXECUTIVE MEMBERS OF THE HECLA HISTORIC VILLAGE ASSOCIATION PLACED THEMSELVES IN A CONFLICT OF INTEREST SITUATION BY REVIEWING AND APPROVING BUILDING PERMIT APPLICATIONS FOR EACH OTHER.

One element of the resettlement process was the importance of maintaining the historic character of the Hecla Historic Village. Controls with respect to building size, shape and style, exterior materials and colour and the type of fencing, sheds, etc. were developed in consultation with the Ex-Landowners Association.

Findings

- The Hecla Grindstone Provincial Parks Management Plan, prepared by the Department and dated March 1988, established a zoning scheme for the Park. The Plan detailed the purpose of the various land-use zones and defined the activities permitted within each zone. The Hecla Historic Village area was designated to be a cultural heritage zone and as such, developments consistent with the cultural heritage, as expressed in site and structure restoration or reconstruction, were appropriate. Any refurbishing of existing structures or new construction was to conform to prescribed conditions respecting form, colours and materials used. Conditions and standards were to be developed and reviewed with all interested parties.
- Department documentation prepared by the Director of Parks in February 2000 stated:

  > *"[On] December 15, 1997 the Department issued a call for proposals for the development of architectural and landscape design guidelines. A steering committee, consisting of the Ex-landowners Representatives and Department of Natural Resources staff provided direction on guidelines development. The consultants met with all lot holders who wished to participate and over a series of meetings finalized the Historic Lands Design Guidelines. The guidelines were developed cooperatively with the lot holders and, as a result, they and the Department have equal ownership. The guidelines apply equally to everyone. In instances where a specific building does not comply, the lot holder is given a list of its shortcomings and a deadline to bring the building into compliance.*

The mailing list for development and distribution of the guidelines included both private and lease lot holders.

At the conclusion of the guidelines development and given the excitement surrounding resettlement, a rush on construction activities occurred. To address processing of applications, the ex-landowners representatives from the Resettlement Committee [HAC] volunteered to assist lot holders in completing applications and interpreting guidelines. The Department did not have the resources to process applications in a timely manner and without the help of the ex-landowner committee members, delays in approvals would have occurred and become an impediment to resettlement."

- The Historic Lands Design Guidelines were published in May 1998 (revised April 1999) by the Department.
- As noted earlier in this report, the lot holders on Hecla Island formed the Hecla Historic Village Association. The executive of this association is comprised of the ex-landowner members of the HAC. They act as the committee processing building permit applications.
- A staff member of the Department, responsible for the commencement of the building permit process, advised us that the committee would get a complete package including blueprints. The committee would send out a letter advising the applicant of either acceptance or required changes necessary to meet the guidelines.
- As members of this committee, the ex-landowner members of the HAC were able to review and approve building permit applications for each other.
- By way of our own observations, and through interviews it has been confirmed that deviation from the historic building guidelines has occurred in the following manner:
    - Bay windows are being built in contradiction to the guidelines;
    - Roof jacks not permitted by the guidelines, are evident;
    - A number of chimneys do not meet historic design guidelines;
    - Television antennae and a satellite dish are in full public view in contradiction to the guidelines; and
    - Garage doors, in some cases, do not meet historic design guidelines.
- As at April 2003, the ex-landowner members of the HAC continue to have significant influence in the application of these guidelines by constituting the executive of the Hecla Historic Village Association.

Conclusions

- *The ex-landowner executive members of the Hecla Historic Village Association placed themselves in a conflict of interest situation by reviewing and approving building permit applications for each other.*

- *By abdicating its responsibility the Department has allowed deviations from the Hecla Historic Lands Design Guidelines to occur.*

8.0 Hecla Land Use and Other Issues

During the course of this investigation the following issues came to our attention:

8.1 HECLA LAND USE ISSUES

Findings

- Two vacation home lots on Hecla Island leased to relatives of an ex-landowner member of the HAC are used as rental properties. Advertisements for these properties appear on the website of a commercial facility operated by the ex-landowner member of the HAC. Leases for vacation home lots require that they be used for vacation home purposes only, and that the Crown must approve any change in use in writing. Despite being aware of this situation, the Department was unable to provide us with any such written approval.
- The Department is reviewing the sale of interests in leases by lease holders to non-related individuals. Sale prices of these interests are reportedly at amounts advantageous to those who secured the leases for $5,000.
- In July 1996, Section 59(2) of the Park Activities Regulation (141/96) stated:

  "No person shall construct, erect or move onto a lot in a provincial park more than one vacation home."

- The Department confirmed that the ex-landowner members of the HAC negotiated with the Department a special development condition permitting two primary residences on each lot in the Hecla Historic Village. The intent of this condition was to provide opportunities for more family members to have cottages on Hecla Island. No formal agreement or minutes relating to these negotiations were produced. However, as a consequence of these negotiations the Hecla Historic Lands Resettlement Lot Holder's Handbook, issued by the Department in May 1998, noted that lots could not be subdivided, but a maximum of two houses were allowed on each lot.
- In 1999 the Department approved a lease application where a second individual was added as an additional leaseholder on a lot. Two residences were moved onto this lot in direct contravention of the Park Activities Regulation noted above.
- In April 2002, Section 59(2) of the Park Activities Regulation (141/96) was repealed and replaced by a new Regulation (62/2002) that allowed the construction of two principal residences on lots in the Hecla/Grindstone Provincial Park. The new Regulation states:

  "Section 59(1): Subject to subsection (2), no person shall construct, erect or move more than one vacation home onto

a) a lot on private land in a provincial park; or

b) a residential or commercial lot in a provincial park.

Section 59(2): No person shall construct, erect or move onto a lot more than two vacation homes in an area designated under the heritage land use category on Hecla Island in Hecla/Grindstone Provincial Park.

Section 59(3): Subsections (1) and (2) do not apply if a vacation home was constructed, erected or moved onto a lot before the coming into force of this section."

- The Department advised us that two additional requests had been received regarding the sale of half interests in lot leases, to unrelated individuals, that would lead to the construction of a second principal residence on these lots. We have been informed that other sales may have taken place without the required notification to the Department to update existing leases.
- As a result of the above, the Department issued a letter in September 2002 to all existing lot holders advising that the Department would be reviewing the development regulation that provides for the construction of two houses on lots within the Hecla Historic Village subdivision.
- During the course of our interviews several individuals advised us, including the former Minister and members of the HAC, that these lot uses are not in line with the original intent of the resettlement of Hecla Island. The occurrence of these situations was not foreseen.

Conclusions

- *By abdicating its responsibility the Department permitted land uses on Hecla Island to occur that were contrary to the intent of the existing Parks Act and Regulations.*
- *The Department should not have issued a handbook with instructions that contravened the Regulations.*

8.2 NON-COMPLIANCE - CROWN LANDS ACT

Findings

- Section 30(1) of the Crown Lands Act states:

"No person holding an office under this Act or employed in the Department of Natural Resources [Conservation] shall, unless authorized by the Lieutenant Governor in Council, while holding the office or employment, directly or indirectly purchase any right, title, or interest in Crown Lands, or land scrip issued by the Government of Canada before July 15, 1930, or deal or traffic therein, either in his own name or by the interposition of any other person, or in the name of any other person in trust for himself, or take or receive any fee or emolument for negotiating or transacting any business connected with the duties of his office or employment."

- Section 30(2) of the Crown Lands Act states:

  "A person who contravenes subsection (1) forfeits his office or employment and is guilty of an offence."

- Section 33 of the Crown Lands Act states:

  "Every person who is guilty of an offence under this Act or the regulations for which no specific penalty is provided herein is liable, on summary conviction, to a fine not exceeding $10,000. and, in default of the payment thereof, to imprisonment for a term not exceeding 90 days."

- Department staff that we interviewed, including a former minister, were not aware that the above sections even existed.

- During the course of our investigation we became aware of several instances where members of the Department had leased or had an interest in a lease of a cottage lot on Hecla Island in contravention of the sections of the Crown Lands Act noted above. It was suggested to us in interviews that similar situations have occurred throughout the Province.

Conclusion

- *By not enforcing Section 30(1) of the Crown Lands Act relating to the acquisition of a right, title, or interest in Crown Land by employees of the Department, the Department may have contributed to the occurrence of conflict of interest situations. This lack of enforcement affords employees, who may have insider information, the opportunity to personally profit from that information.*

8.3 NON-COMPLIANCE - EXECUTIVE GOVERNMENT ORGANIZATION ACT

Findings

- Section 10(1) of the Executive Government Organization Act states:

  "Where, under any Act of the Legislature, power or authority to do any act or thing, including, without limiting the generality of the foregoing, power or authority

  a) to enter into any agreement; or

  b) to execute or approve any transfer, deed, conveyance, notice, demand, agreement, lease, caveat, lien, plan or other document; or

  c) to issue, grant, suspend, or cancel any permit, licence, certificate, or authority; or

  d) to execute, issue or approve, any order or requisition, warrant, or document, for work, purchase of goods, quotation of prices or articles or materials, or other purpose; or

  e) to receive any notice, direction or other document;

  is granted to, or vested in, a minister, the minister may, by written

authorization approved by the Lieutenant Governor in Council, delegate that power or authority to any person employed under him in the executive government, subject to such limitations, restrictions, conditions, and requirements as the minister may impose and as set out in the written authorization."

- During the course of our investigation we became aware of several instances where leases for cottage lots and documents authorizing the assignment of cottage lots and the sale of houses owned by the Crown to cottage lot holders in the Hecla Historic Village were signed on behalf of the Province by Department employees who did not have the legal authority to do so.

Conclusion

- *By not enforcing Section 10(1) of the Executive Government Organization Act relating to the delegation of signing authority, the Department may have put the Province at risk. As our investigation was limited to the resettlement of Hecla Island, we have not investigated the extent of non-compliance with signing authorities within the Department as a whole or what legal implications this may lead to.*

9.0 Gull Harbour Marina

ALLEGATION

THAT THE SELECTION PROCESS USED BY THE DEPARTMENT FOR THE LEASING OF THE GULL HARBOUR MARINA WAS HANDLED INAPPROPRIATELY.

The Gull Harbour Marina and Cantoba Club (now known as the Lighthouse Inn) are located in Hecla/Grindstone Provincial Park. Since the creation of this park these facilities have functioned through a commercial lease agreement as a private sector marina and restaurant operation, although the buildings and infrastructure were assets of the Crown.

9.1 LEGISLATIVE AUTHORITY

The Legislative authority for the Province to grant a lease for commercial operations within a provincial park is established in the following legislation:

- Section 16(1) of the Provincial Parks Act states that the Minister may grant leases and permits for the occupation of Crown lands in provincial parks in accordance with the regulations.
- Section 3(1) of the Permits and Leases Regulation (150/96) of the Provincial Parks Act states that the Minister may grant to an applicant a lease of a commercial lot in a provincial park for a term not exceeding 21 years, renewable for any additional term, not exceeding 21 years, specified in the lease.
- Section 3(3) of the Permits and Leases Regulation (150/96) of the Provincial Parks Act states that a lease of a commercial lot may be granted subject to such conditions as the Minister considers appropriate.

9.2 BACKGROUND

In March 1999, due to concerns relating to the operation of the Gull Harbour Marina and Cantoba Club facilities, the Department advised the operator of its intention to advertise a public tender for the right to conduct these business operations upon the conclusion of the existing lease agreement on April 30, 2001. Subsequently, the operator met with the Department to discuss the possibilities related to an early conclusion of the lease.

An agreement was signed by both parties in June 1999 that suspended the rights and obligations of the existing lease for the 1999 operating season. The agreement allowed the Department to install a short-term interim operator and provided for negotiations for compensation for improvements, assets, equipment and other matters associated with this facility. As part of this agreement the Department hired an appraisal services company to conduct an appraisal of the improvements and assets located at this site.

In July 1999, the report of the appraisal services company estimated the market value of the assets related to the Gull Harbour Marina and Cantoba Club facilities along with other improvements to the property to be $204,000. Ensuing negotiations resulted. On March 7, 2000, Treasury Board authorized the Department to enter into an agreement with the operator who had been seeking compensation in the amount of $398,000. This agreement was to provide compensation of up to $240,000 for permanent improvements, assets, equipment and other matters associated with the facility arising from the early termination of the existing commercial lease. On March 31, 2000 an agreement was signed between the operator and the Department providing for compensation of $240,000.

After utilizing interim operators for the 1999 and 2000 operating seasons, in August 2000, the Department issued a *"Proposal Call for the Development, Operation and Maintenance of a Commercial Operation in Association with the Gull Harbour Marina and Cantoba Club Site and Buildings in Hecla/Grindstone Provincial Park"* (Proposal Call).

9.3 THE PROPOSAL CALL PROCESS

A staff member of the Department was responsible for the preparation of the Proposal Call. The Proposal Call was drafted, circulated to a variety of department staff members for comment, edited and subsequently finalized and approved for release and advertising.

Findings

- Procedures for this Proposal Call were based on, and followed, Procedure Directive, PR1306 - Tendering to the Private Sector Land and Building Leases in Provincial Parks, contained within the Department's Policy and Procedures Manual.
- Procedure Directive PR1306 has not been revised since it was issued on April 10, 1987. A review of the Policy and Procedures Manual revealed that most of the policy and procedure directives have not been updated for at least a decade. Much of the terminology and many titles are outdated and do not reflect the current departmental structure.
- The Proposal Call contained, among other things, the following information:

- The Province of Manitoba would sell Gull Harbour Marina and Cantoba Club structures, the rental cabin and boat docks;
- Acceptable business proposals would be those that enhance the park experience for park visitors;
- Preference would be given to those proposals, which incorporate a four-season operation;
- The amount of money offered with the proposal would only be one factor in evaluating offers. The opportunity would not necessarily be awarded to the proposal including the largest financial offering; and
- The selection criteria component of the Proposal Call stated that the proposals would be generally evaluated on the basis of, among other things, the proposer's:

  a) Financial ability to undertake the proposed business;

  b) Financial viability of the proposal;

  c) Record of experience in managing this or similar types of businesses;

  d) Range and quality of goods and services offered to the public;

  e) Ability to provide the necessary facilities and equipment;

  f) Building/Facility design and level of investment;

  g) Design and quality of interior improvements;

  h) Investment in quality infrastructure;

  i) Amount of proposed purchase offer;

  j) Demonstrated understanding of and stated adherence to the Hecla Historic Lands Design Guidelines;

  k) Demonstration through a credible marketing plan that the enterprise will be an operational and financial success; and

  l) Vision of their contribution to the betterment of the park atmosphere and environment.

Conclusion

- *The Proposal Call process was conducted appropriately in accordance with the procedures as outlined in Policy Directive PR1306 of the Policy and Procedures Manual of the Department.*

9.4 THE SELECTION PROCESS

Prior to the submission deadline, the staff member of the Department responsible for the Proposal Call solicited the assistance of three other staff members to review the submissions and make a recommendation for award. These staff members were chosen based on *"experience in a design element, an overall park management discipline, and someone local to the island"*. A representative from the Department of Industry, Trade and Tourism was asked to participate but was unavailable on the submissions review date.

Findings

- Four submissions were received and accepted by the October 13, 2000 deadline date. The content of these submissions is detailed in **Appendix H**.
- The submission that was ultimately selected contained as part of its proposal, funding of $52,000, for interior and exterior renovations to an on-site Motel Unit should that Motel Unit become available for inclusion in the lease. The Motel was not included as an asset to be sold by the Province in the Proposal Call. At an on-site meeting held at the Marina on August 24, 2000 proposers were advised that the Motel Unit would not be part of the assets available. The Motel Unit was subsequently included as part of the Marina lease (Section 9.5).
- Seven "weighted" criteria were developed for use in rating the submissions. The two most significant components in terms of weighting were Operational Plan at 45% and Financial at 20%. The Operational Plan criteria included components for, among other things, season(s) of operation, days and hours of operation, new developments proposed and range and quality of goods and services.
- Interviews determined that the preference to be given to those proposals that incorporated a four-season operation was not a significant factor in the evaluation process. A member of the selection committee stated, *"... preference may not have been the best choice of words. I think they would have been graded somewhat higher if their season of operation were to go beyond a simple summer operation".*
- Interviews of the selection committee members determined that they were not in agreement as to whether discussions, regarding the meaning of each set of criteria or how to grade them, took place prior to the public opening of the submissions. We were informed that general discussion regarding overall impressions of submissions did take place after all submissions had been individually read and graded.
- One member of the selection committee had close personal ties to the Island, and although there was no direct evidence of a conflict of interest or undue influence in the proceedings, there was the possibility of the perception of a conflict.
- After individually evaluating the submissions, the ratings of the selection committee members were as follows:

Rating of Submissions				
Selection Committee Member	Submissions			
	A	B	C	D
1	2nd	1st	3rd	4th
2	2nd	1st	3rd	4th
3	1st*	1st*	3rd	4th
4	1st	2nd	3rd	4th

*One reviewer rated A and B tied for 1st.

- Due to the closeness of the ratings of Submission A and Submission B and after internal discussions and consultation with the Director of Parks, a decision was made to seek a further level of review. The two submissions were then forwarded to the representative from Industry, Trade and Tourism who had previously been unavailable to sit on the selection committee. This individual reviewed the submissions, providing comments on both positive and negative aspects of both and summarized that, *"The two proposals have significant weaknesses, with funding capability the primary weakness with [Submission B] and narrow programming focus, and limited seasonal operation the primary weakness with [Submission A]"*. He went on to suggest that it may be an important next step to bring in a third party evaluator to review the identified weaknesses with each party and determine the degree of remedial action they would be able to provide.

- The suggestion to proceed to a third party evaluator was not followed up. One member of the selection committee suggested that, *"I don't think we had a comfort level with who we could go to outside of government, and how quickly we could do it, and how much it would cost given that funding with the government is restricted in a lot of areas"*. Rather, a decision was made to have an internal Department Manager review the two submissions.

- An email from a member of the selection committee to the Director of Parks, stated that the Manager referred to above, *"...indicated to me that in his opinion he would have rated [Submission A] first and [Submission B] second had he been a part of the selection committee. His deciding factor was his belief that the Marina was an important aspect of the Hecla landscape and this might be our last 'shot' at doing something worthwhile with it. In that regard he felt [Submission A] outscored [Submission B] overall"*. Based on the two additional reviews the selection committee member indicated that, unless the Director directed him otherwise, the award would go to Submission A. By return email, the Director wrote, "proceed as outlined".

- Procedure Directive PR1306 (g) of the Department's Policy and Procedure Manual states, *"... where the amount bid is not the overriding factor, the Province will award the tender based on the established qualitative criteria. The selection process will be sufficiently documented and a recommendation submitted to the Director of Parks for approval"*.

- A review of departmental documentation revealed that the individual submission review worksheets, used by the selection committee to grade each submission, provided minimal detail as to the rationale for the grade awarded to each of the criteria. No formal recommendation concerning the award was submitted to the Director of Parks for approval.

- Based on our interviews, the members of the selection committee were in agreement that the determining factors in the decision to award to Submission A were a strong emphasis on Marina development backed by financial viability and total capital investment.

- Department staff indicated that background checks on the individuals submitting the proposals for the Marina operation were not completed.
- On November 27, 2000, a letter was sent advising that the proposer of Submission A had been conditionally selected for award.

Conclusions

- *Proposers were placed at a disadvantage when they were not given an opportunity to resubmit proposals when consideration was subsequently given to including the operation of the Motel Unit as part of the lease.*
- *As a result of the minimal documentation surrounding the selection process, we are unable to form an opinion on the fairness of the selection process.*
- *The policy of selecting someone local to the Island for reviewing the proposals created an undue risk of the perception of a conflict of interest.*

9.5 THE LEASE

On March 8, 2001, a 21-year lease (**Appendix I**), made pursuant to the Provincial Parks Act, was signed between the Crown, represented by the Minister of Conservation, and the proponent of Submission A, for the operation of the Gull Harbour Marina.

Findings

- A review by Manitoba Justice, determined that the transfer of assets from the Crown to the lessee could be accomplished through the lease and no Treasury Board or Cabinet approval was required. The Department of Conservation had discussed the issue with the Treasury Board Secretariat, which, based on a review of draft material, advised the Department to proceed if it was satisfied that it had fulfilled all required Treasury Board and/or Cabinet requirements.
- Schedule "A" of the lease agreement contains the legal description of the property leased by the Crown to the operator of the Gull Harbour Marina and is shown in an attached orthophotograph marked as schedule "A-1". Documentation and discussions revealed that the Department agreed to the lessee's request to revise the draft lease agreement to alter the property boundary to include the area of the overflow camping site north and west of the driveway and a narrow strip of shoreline property to the south of the Marina. The purpose of these two property additions was to accommodate space for boat storage and for future expansion of docking facilities.
- The lease agreement lists "Motel Unit and contents" as part of the facilities transferred from the Province to the lessee.

  The Motel Unit had been requested by Venture Manitoba Tours Ltd. (Venture) for use as staff housing at the Gull Harbour Resort (Resort). The Department had verbally agreed with this request. According to Venture this was based on an arrangement between Venture and the Department whereby Venture relinquished its interest in three houses in the Historic

Village which were part of the resettlement project. Venture also indicated that the Motel Unit formed part of the compensation package in addition to a $75,000 credit to Venture's lease based on the upgrade cost to the three houses of approximately $80,000.

Preparation work for the Venture site of the Motel Unit including clearing of the land, spreading and leveling of gravel, provision of water and sewer service to the site had taken place in the fall of 2000 at a cost of approximately $12,000 to Venture. Venture stated that it was their full intent to move the Motel Unit to a location near the Resort for staff housing. The Director of Parks, however, called Venture in January 2001 and advised that the Motel Unit was no longer available to them.

Venture advised our Office that the Director informed them that the Motel Unit had been included in the recently concluded lease arrangements for the Marina. Venture stated that they had reminded the Director that ownership of the Motel Unit had been granted to Venture by way of a verbal agreement. The Director indicated to us that as the Motel Unit had not been moved, and the Department had not heard from Venture with respect to relocation, he believed Venture was no longer interested in the facility.

- The Province utilizes a standardized template for a Commercial Operations Lease. This template was developed approximately a decade ago. For leases that may deviate from the norm the template is modified to suit the circumstance. In discussing this template with Department staff, it was noted that the inclusion of references to development proposals and the costs associated with them, were never contemplated in that document.

- The lease contains no clause to bind the lessee to the proposed expenditures or undertakings detailed in the lessee's submission. In fact, a clause of the lease states that, *"...there are no undertakings, representations or promises, express or implied, other than those contained in this agreement"*. This would lead us to believe that there is nothing legally binding on the lessee to fulfill the commitments which were made in the response to the Proposal Call and on which the lessee was deemed to be the winning proponent.

- In discussions related to the above topic, a member of the Department noted that, *"I think we looked at it from the point of view that in fact if he did what he said he was going to do, we would end up with almost exactly the kind of operation that we envisioned for that site. But having said that, when you sign that lease agreement then that becomes sort of a good faith issue as opposed to an ironclad contractual issue"*. When questioned about the lease and the lack of inclusion of any performance requirements, Department staff indicated that there were shortcomings and weaknesses in Department leases.

- Clause 10(3) of the lease agreement provides that the Crown may terminate the lease agreement on April 30th of any year of the lease

agreement by giving notice in writing to the lessee at least one year prior to the date of termination. However, clause 10(4) of the lease agreement stipulates that should the Crown terminate the lease agreement in accordance with clause 10(3), the Crown agrees to pay to the lessee due compensation for the lessees interest in the facilities.

- Clause 2(3) of the lease agreement states that for the purposes of clause 10(4) and subject to the value of any improvements and additions made to the facilities by the lessee, the value of the lessee's interest in the facilities shall be limited to $5,000 for a period of five years from the date of execution of the lease.

- Clause 9(3) of the lease agreement states that, *"The Lessee shall provide, maintain and pay for comprehensive general liability insurance protecting the Lessee and its employees against claims by third parties for any injury to persons (including death), damage or loss to property which may arise directly or indirectly out of the occupation of the premises or the performance of this Agreement by the Lessee. That insurance shall be placed with an insurance company or companies and be in such form as may be acceptable to the Crown and shall be for an amount of not less than two million dollars ($2,000,000), inclusive of any one occurrence and shall name the Crown as an additional named insured with respect to the operations of the Lessee under this Agreement".*

  The clause further states that, *"Evidence of insurance in the form of a Certificate of Insurance shall be provided to the Crown by the Lessee within thirty (30) days of the execution of this Agreement. Evidence of renewal of insurance in the form of a Certificate of Renewal of Insurance shall be provided to the Crown by the Lessee at least thirty (30) days prior to the expiry of an insurance policy".*

  The Department has advised that no Certificate of Insurance or Certificate of Renewal of Insurance has been provided to or requested by the Department from the lessee.

Conclusions

- *The original proposers were disadvantaged when the Motel Unit and contents, the overflow camping area, and the lakefront strip of land were included in the lease at no additional cost.*

- *The lessee was advantaged when the lease was structured such that the lessee's requirement to fulfill his promised obligations as stated in his proposal was based solely on the lessee's "good faith". This places the Province at a disadvantage for ensuring that conditions in the proposal on which the lessee was selected are met.*

- *The Department acted in bad faith by not honouring a verbal commitment to transfer the Motel Unit to Venture Manitoba Tours Ltd.*

- *The Department has neither received nor sought the required Certificate of Insurance from the lessee. As such, the Department may be unknowingly exposed to significant risk from any lawsuits resulting from the operation of the Marina.*

9.6 THE SEWAGE LINE

In the fall of 2001, the Department verbally agreed to provide for the installation of a sewer line from the Gull Harbour Marina to tie into the Department sewage handling system. The Marina operator agreed to construct public washrooms attached to the Cantoba Club, with the understanding that the Marina would accommodate the public from the nearby campground, as well as other tourists visiting the Marina. Maintenance and repair of these facilities were to be the responsibility of the Marina operator. The agreement also allowed the Marina operator to connect the private washrooms in the Cantoba Club to the Department sewage handling system.

Findings

- The Gull Harbour Marina Proposal Call, leading to the awarding of this operating lease for the Gull Harbour Marina had indicated that the operator must *"pay any and all costs associated with the installation, maintenance and use of a private sewer system"*.
- In January 2001, prior to the lease for the Gull Harbour Marina being finalized, the Marina operator approached Department personnel to investigate the possibility of the Department installing a sewer line from the Marina to the Department sewage handling system in Hecla, in exchange for the Marina operator's construction of a public washroom.
- Department staff estimated that the anticipated cost of the Department building a public washroom in the Marina area and putting in a sewage line to service it would have cost approximately $50,000 to $70,000. The Department provided documentation indicating that it had spent approximately $52,000 for a modern freestanding washroom facility in another district. That facility, however, provided a total of eight stalls whereas the Marina facility built by the operator, provided only two stalls.
- Department staff indicated that there had been an ongoing problem for a number of years with members of the public using the washrooms in the Cantoba Club. They indicated that the overflow campground is located adjacent to the Marina property and many campers preferred the flush type Marina washroom to the pit privies available at the overflow camping area. They noted that complaints had been lodged by the current and by the previous operators of the Marina about this situation. These operators also complained that, largely due to this situation, the cost of holding tank pump-outs was excessive.
- A member of the Department indicated that the department was paying for the cost of pumping out the current operator's holding tanks. The staff member related that during August and September of 2001, the Department spent $1,100 to pump out these tanks. He also noted that the Department had never previously undertaken the cost for such services. The rationale for this service was the Department's belief that the Marina operator should not be burdened by the use of the Cantoba Club washrooms by the general public.

- Subsequently, a number of discussions took place between Department staff and the Marina operator culminating in a decision to undertake an engineering study of running a small sewer line from the Cantoba Club to the Department sewage handling system.
- In October 2001, the engineering study, without the inclusion of an onsite inspection, estimated the cost of the project to be approximately $15,000. The sewer line tie-in was subsequently tendered and two submissions were received with the lowest bid of $23,881.50 being accepted. Other trade expenses increased the ultimate cost of the project to approximately $27,000.
- No written agreement or memorandum of understanding between the Department and the Marina operator was ever developed regarding the sewage line tie-in by the Marina to the Department's main line.

Conclusions

- *The Gull Harbour Marina Proposal Call specifically identified that the responsibility for the costs associated with a sewage line would be that of the Marina operator. However, when approached by the Marina operator about this project, the Department changed its position and paid for the installation of the line.*
- *In addition to the advantages afforded to the Marina operator, noted in Sections 9.4 and 9.5 above, the operator financially benefited from the sewer line tie-in and the original proposers were disadvantaged.*
- *In the absence of a formal agreement the Department has no assurance that the verbal agreement between the parties will be honoured, thereby placing public monies at risk.*

10.0 Former Deputy Minister Family Land Transactions

ALLEGATION

THAT THE FAMILY OF A FORMER DEPUTY MINISTER OF THE DEPARTMENT RECEIVED PREFERENTIAL TREATMENT CONCERNING AN EXCHANGE OF CROWN LAND ON HECLA ISLAND.

The term "preferential treatment" is a difficult one to address from an audit perspective. There are circumstances in which preferential treatment is appropriate. For example, a public policy decision taken to grant a preference to a citizen or group of citizens who have been harmed by past government actions may well be appropriate. One can argue that the decision to allow former land owners on Hecla Island to have preferential rights to acquire land from the Province can be an example of appropriate preferential treatment.

Because the issue of preferential treatment may be a consequence of public policy decisions, we have assessed its appropriateness using the following criteria:

- The person or persons authorizing preferential treatment must have the authority to do so;
- The process followed granting preferential treatment, and the subsequent processes, must comply with relevant legislation and regulations; and
- Reasonable efforts should be made to inform the public or affected parties of the rationale when preferential treatment is granted.

Pursuant to the creation of a provincial park on Hecla Island in 1969, the then Land Acquisition Branch (LAB), now Land Management Services, undertook to purchase certain land on Hecla Island on behalf of the Parks Branch (Branch) of the Department, for the proposed park.

As the acquisition program proceeded, it became increasingly more difficult to negotiate mutually agreeable settlements. In an effort to ensure some certainty of gaining control of the land of interest to the Branch, it was decided to expropriate the remaining land for the project. This scenario resulted in some of the property being acquired by mutual agreement and the remainder by expropriation.

One of the allegations brought forward by citizens of Manitoba was that the family of a former Deputy Minister of the Department received preferential treatment regarding a land exchange on Hecla Island. The preferential treatment was identified as the transfer to the father of the Deputy Minister of both a previously expropriated parcel of land for $1 (Parcel 3), originally belonging to an uncle of the Deputy Minister, and the return of a previously expropriated parcel of land (Parcel C), originally belonging to the grandfather of the Deputy Minister.

The former Deputy Minister joined government in June 1988 as a Deputy Minister of the Department of Northern Affairs and subsequently became the Deputy Minister of the Department of Natural Resources in October 1993. Upon entering government service, in 1988, he declared a conflict of interest relating to any issues surrounding Hecla Island.

Findings

- In September 1970, the Province entered into two separate agreements with the uncle of the former Deputy Minister that provided for the purchase, by mutual consent, of approximately 219 acres of land. One of the properties purchased through those agreements was Parcel 3.
- In September 1971, the Province expropriated, under the new expropriation act in place at the time, land from the former Deputy Minister's grandfather that included Parcel C, land from his father that included a Parcel 4, and land from his brother's estate.
- In August 1972, as a result of the Walker Report, expropriation proceedings by the Province with regards to Parcel 4 were abandoned. The former Deputy Minister's father continued to live on this property utilizing the land and buildings of both Parcel 4 and Parcel C.
- The former Deputy Minister's family had retained legal counsel to represent the family regarding expropriation matters. In a letter in October 1984, to the Director of LAB from the family's legal counsel, the request was made to remove the Declaration of Expropriation from the

grandfather's estate. Legal counsel presumed that the Province had abandoned its earlier intention to expropriate due to the absence of any initiatives by the Province for the thirteen years following the Declaration.

- In response to above letter, on October 10, 1984, the Director of LAB indicated that, *"... we have not yet settled the matter of compensation for this property, the expropriation still stands and as far as we know there is no thought of abandonment"*. The letter further stated that, *" ... this is a case which might be brought back before the Land Value Appraisal Commission to consider the matter of compensation. There was a hearing of the Commission in January of 1972, after the property had been expropriated. The estate rejected the amount of compensation certified by the Commission which would normally result in the former owner having the responsibility of bringing the matter before the Court of Queen's Bench which has not happened"*.

- In January 1985, in a letter to the Attorney General of Manitoba, the legal counsel of the family noted that no initiatives had been undertaken in respect of the grandfather's property since expropriation. He indicated that the basis for the expropriation was for "park purposes", and that to date, there had been no requirement whatsoever for this property for "park purposes" and accordingly the property was not reasonably necessary for the objectives of the Province. The letter requested that steps be taken to lift the Declaration of Expropriation.

- On July 24, 1985, Cabinet approved a recommendation that settlement of the remaining unsettled expropriations on Hecla Island be vigorously pursued.

- In a memo from the Director of LAB to the Director of Parks, dated June 20, 1988, it states that the former Deputy Minister's family *"... intend to make representations to the new government respecting matters on Hecla Island. It is obvious that these people are going to try again to upset the expropriation proceedings. These cases have been unsettled since 1971 and we would hope that if your Branch is drawn into any discussion on the possibility of abandonment, it will resist same. It would be totally unfair to all of the other owners who were expropriated and who have settled with us to now have a very vocal minority of owners succeed in regaining ownership of their property. We think it should be made clear to those people once and for all that there is not going to be any abandonment and the matter of compensation should be settled without any further delay"*.

- Another memo from the Director of LAB to the Director of Parks, dated August 14, 1989, stated, *"I trust that any persons who have the responsibility of deciding whether or not these particular properties should be allowed to revert back to the original owners are fully aware of the disastrous possibilities of such a course of action"*.

- In a letter dated September 11, 1989, from the Minister of Natural Resources to the family's legal counsel, it states, *"I wish to advise that*

there is no thought of abandoning these expropriations. I would hope that the matter of compensation can be settled without delay".

- We were unable to locate any documentation relating to this matter covering the period from late December 1989 to late January 1991. Department staff was not able to provide any rationale for this situation. During the course of our investigation we requested an interview with the Assistant to the Minister of the Department in place in 1989 - 1991. He did not avail himself to an interview.
- In discussion with the former Minister of Natural Resources, at that time, he stated that the recently elected government was changing public policy towards privatization.
- A memo dated January 23, 1991, from Department Crown Counsel to the Chief of Planning of the Branch, noted that the expropriation of the (former Deputy Minister's family) property was to be settled on terms that included the transfer of one parcel of land back to the family. Counsel stated that provision for this was to be made under Section 50 of the Expropriation Act.
- Section 50 of the Expropriation Act states:

"Abandonment of expropriation.

50(1) Where, at any time before the due compensation payable upon an expropriation is paid in full, the land or any part thereof is found to be unnecessary for the purposes of the authority, or it is found that a more limited estate or interest therein only is required, the authority shall notify each owner of the land, or estate or interest, who has been served with the notice of expropriation, and each of them may by writing elect

a) to take back the land, estate or interest, in which case he has the right to compensation for consequential damages; or

b) to require the authority to retain the land, estate or interest, in which case he has the right to due compensation therefore.

Effect of abandonment.

50(2) Where all the owners elect to take back the land, estate or interest under Clause (1)(a), the authority may, by an instrument signed by it and registered in the land titles office and served on each owner, declare that the land or part thereof is not required and is abandoned by the authority or that it retains only such limited estate or interest as is mentioned in the instrument, and thereupon

a) the land declared to be abandoned reverts in the owner from whom it was expropriated and those entitled to claim under him; or

b) in the event of a limited estate or interest only being retained by the authority, the land so reverts subject to such limited estate or interest."

- The January 23, 1991 memo further stated:

  > *"This section applies where the authority (the person, in this case, the Crown, who has the power to expropriate) finds that the land is no longer necessary for the purposes of the expropriation.*
  >
  > *In these cases the land will revest in the former landowner and the landowner is entitled to compensation for "consequential damages" (i.e. the loss suffered because of the taking of the property for the period in question).*
  >
  > *As part of the settlement of the compensation issue, conditions can be negotiated as to the appropriate compensation and other conditions which may be appropriate."*

- In a memo to file, dated January 25, 1991, the Director of Parks stated that he had been advised by a special assistant to the Minister of the Department that there was some urgency to resolve the outstanding expropriations of the former Deputy Minister's family lands. It was noted that the former Deputy Minister's family was prepared to accept the previously agreed to compensation for his father's and brother's land if the Province would abandon the expropriation for the lands of his grandfather's estate. The Director further noted that he was advised that those terms were acceptable to the Minister and that he should attempt to have it resolved by week's end.

- Surveys completed in February 1991 determined that the Hecla Village Community Hall was wholly located within the expropriated property of the former Deputy Minister's grandfather. The surveys also determined that the house, garage, barn and television tower of the former Deputy Minister's father were not located on his private land (Parcel 4) but rather were wholly located within Parcel 3, which was at that time Crown land. A further survey was completed in April 1991, to adjust the Parcel C property line to exclude the community hall from this property.

- On May 29, 1991, the father of the former Deputy Minister signed an Offer to Settle and Conditional Release on all of the family's expropriated properties excepting Parcel C. The settlements were made for the appraised values at expropriation plus interest dating back to 1972. The Offer to Settle and Conditional Release for the properties of the former Deputy Minister's grandfather's estate included both interest dating back to 1972 as well as a transfer of title to Parcel 3 from the Province to the estate.

- On May 29, 1991, the father of the former Deputy Minister, acting on behalf of the estate of the former Deputy Minister's grandfather, signed an agreement to take back Parcel C, which the Province had designated as surplus land.

- On March 27, 1992, a Treasury Board Pre-Clearance approved payment of $43,000 to the former Deputy Minister's father for the purpose of settling all the former Deputy Minister's family's outstanding expropriations in Hecla Provincial Heritage Park.

- On February 21, 1994, an Abandonment Certificate was issued relating to Parcel C which had been expropriated from the former Deputy Minister's grandfather's estate. As there had been no agreement as to due compensation for Parcel C, and pursuant to Section 50(1) of the Manitoba Expropriation Act, the former owner (the former Deputy Minister's grandfather's estate) elected to take back Parcel C. The land was declared abandoned by the Province and was re-vested to the estate, free and clear of all encumbrances.
- In June 1994, Parcel 3 was registered (for a consideration of $1) in the name of the former Deputy Minister's father in the Winnipeg Land Titles Office.

Conclusion

- *The family of a former Deputy Minister of the Department received preferential treatment concerning an exchange of Crown land on Hecla Island in a manner that, except for public consultation, was consistent with our criteria for preferential treatment. The Minister who authorized preferential treatment had the authority to do so, and the process granting preferential treatment, and the subsequent processes, complied with relevant legislation and regulations. However, more effort could have been made to inform the public of the rationale for the granting of the preferential treatment, even though a public consultation was not required under the Provincial Parks Act in effect at that time.*

11.0 Private Landowner Land Transaction

ALLEGATION

THAT A HECLA ISLAND PRIVATE LANDOWNER RECEIVED PREFERENTIAL TREATMENT CONCERNING AN EXCHANGE OF CROWN LAND ON HECLA ISLAND.

The term "preferential treatment" is a difficult one to address from an audit perspective. There are circumstances in which preferential treatment is appropriate. For example, a public policy decision taken to grant a preference to a citizen or group of citizens who have been harmed by past government actions may well be appropriate. One can argue that the decision to allow former land owners on Hecla Island to have preferential rights to acquire land from the Province can be an example of appropriate preferential treatment.

Because the issue of preferential treatment may be a consequence of public policy decisions, we have assessed its appropriateness using the following criteria:

- The person or persons authorizing preferential treatment must have the authority to do so;
- The process followed granting preferential treatment, and the subsequent processes, must comply with relevant legislation and regulations; and

- Reasonable efforts should be made to inform the public or affected parties of the rationale when preferential treatment is granted.

Findings

- An ex-landowner's land holdings on Hecla Island had been expropriated in December 1970 and settled with payment in November 1972. At the time of expropriation there were no buildings on the site and no leaseback options were granted to the landholder.
- In August 1988, a Hecla Island private landowner proposed a land exchange with the Province. This request was based on the fact that the landowner did not have permanent access to a portion of his property. He was required to obtain a temporary highway permit in order to gain access to this portion of his property. This land exchange request was denied. Department documentation indicated that the rationale for the denial was that the exchange was not viewed as a value for value transaction and the Department was concerned about setting a precedent.
- In 1994, this Hecla Island private landowner again approached the Province this time proposing a 4:1 land exchange.
- In December 1994, Cabinet approved in principle a 4:1 land exchange (4 acres of privately owned land for each acre of Crown owned land) that provided the private landowner with increased lake front property in exchange for giving up his private back-tier holdings. In addition to obtaining the land, the Province also gained control of a public cemetery and roadway. The lakefront property provided to the private landowner in this exchange included a portion of the expropriated landholdings of the ex-landowner noted in the first finding above.
- In August 1996, the new Provincial Parks Act was proclaimed. Under this Act the exchange or sale of Crown land in a Provincial park was prohibited. Despite this prohibition, the Department decided to proceed with the land exchange as agreed in principle in 1994. In order to complete the exchange an amendment to the Park Districts Designation Regulation was required to de-park the land involved. Once the exchange was complete the land would, by regulation, be designated again under the Act.
- As required under the Act, a public consultation regarding the changes to the regulation was held in June 1997.
- In March 1998, the 4:1 land exchange was executed by means of an Order-in-Council.
- At the time of the Hecla Island resettlement process in 1997, Department documentation provided to us did not contain any application by the ex-landowner (noted in the first finding) for a cottage lot in the Hecla Historic Village. The ex-landowner indicated that he had never been notified by the Department about his possible eligibility for a cottage lot.

Conclusion

- *Given the above criteria for assessing preferential treatment, a Hecla Island private landowner received preferential treatment concerning an exchange of Crown land on Hecla Island that was consistent with our criteria for preferential treatment. The Minister who authorized preferential treatment had the authority to do so, and the process granting preferential treatment, and the subsequent processes, complied with relevant legislation and regulations. In this case, a public consultation was conducted to inform the public of the rationale for the granting of the preferential treatment in compliance with the Provincial Parks Act of 1996.*

12.0 Recommendations

12.1 PAST TRANSACTIONS

Resettlement of Hecla Island

- That the Department seek legal advice as to its options regarding lots and property secured in the Hecla Historic Village by individuals under inappropriate circumstances.
- That the Government consider whether action should be taken to review current land holdings and to provide redress for those persons who were disadvantaged by the process used in securing land at the Hecla Historic Village. The Government may decide to seek legal advice in assisting with this assessment.
- That the Department create, and have approved by the Minister, formal terms of reference and conflict of interest guidelines to address the Hecla Historic Village Association's role in reviewing and approving building permit applications.
- That the Department assume responsibility for ensuring that the application of design guidelines at Hecla Island are applied uniformly in interpretation, treatment, and enforcement.
- That the Department take immediate steps to resolve the subdivision of lease situation that has arisen at Hecla Island.

Gull Harbour Marina

- That pending the result of the Department of Justice's review of the problematic lot and property transactions, and of the Department seeking legal advice as recommended above, that the Department revisit the existing leasing arrangement for the Gull Harbour Marina.
- That the Department should ensure that the required Certificates of Insurance are obtained from the lessee, as stipulated in the lease agreement.

12.2 ON-GOING OPERATIONS

We recommend that the following practices be adopted by the Department for all future transactions.

Advisory Committees

- That when advisory committees are appointed by a minister, formalization of the appointment and the terms of reference associated to their tasks be completed by way of documentation. Terms of reference should address situations where potential conflicts of interest could arise.

Application Forms

- That application forms which contractually bind the Province contain the date of execution, signature of the applicant(s), and a formalized witnessing process such as utilizing a notary public, commissioner of oaths or other appropriate official.
- That the detail with respect to the time and date of receipt of application forms by the Department be accurately recorded in all cases.
- That applications received after the required and publicized cutoff date not be considered.

Process Controls

- That the criteria and their application for a process of this nature be approved by an appropriate level of authority.
- That the Department, when confronted with a similar project, undertake a formal notification process to all those who may be eligible.
- That when eligibility criteria are developed and made known to the public, the criteria be followed in each case so that each transaction can be benchmarked against the stated criteria.
- That when eligibility criteria change, these changes be approved in a similar manner to the approval of the original criteria.
- That in those cases where an eligibility list is developed this list be made available to the public or interested parties keeping in mind the requirements of the Freedom of Information and Protection of Privacy Act.
- That minutes of meetings and the rationale for decisions which ultimately result in contractual arrangements between the Province and members of the public be documented and retained.
- That detailed records with respect to the results of all draws be documented and maintained for the length of time as defined by Statute.
- That background and due diligence inquiries to validate the financial information provided by each respondent to a proposal call, including

credit worthiness, be completed and documented by the Department.

- That the Department prohibit the practice of entering into verbal agreements where significant public monies are involved. The use of formal written agreements should be required in all such circumstances.
- That, on a periodic basis, the Department review all legal templates to ensure they continue to protect the public interest.
- That all agreements involving transfer of property under the control of the Department be formalized and fully documented.

Policy and Procedures

- That the Department develop formalized policies and procedures to confirm the validity of documentation received which contractually binds the Province with respect to the leasing of lots.
- That the Department develop a policy, complete with definitions of terms, to deal with public draws.
- That the Department develop formalized policies and procedures to confirm the validity of documentation received which results in the disposal of a Crown asset.

Non-Compliance with Legislation

- That the Department take steps to enforce Section 30(1) of the Crown Lands Act.
- That the Department conduct a review of the interests in Crown Land held by, or sold to, Department employees, to fully identify and address situations of conflict of interest.
- That the Department seek legal advice as to retroactive enforcement of the Act.
- That the Department take steps to enforce Section 10(1) of the Executive Government Organization Act.
- That the Department seek legal advice as to the legal status of documents signed on behalf of the Province by unauthorized employees.

Response from the Department of Conservation

Manitoba Conservation officials have reviewed this report and confirm that the document has appropriately cited information provided by the department and that it is, to the best of their knowledge, factually correct. The department is of the view that the recommendations follow logically from the information and conclusions presented in the report, and that their implementation will be very useful. Some actions have already been undertaken or are underway which we believe will address some of the recommendations. Manitoba Conservation accepts all of the reports recommendations and commits to implementing all of them as quickly as practically possible. There are some matters raised in the report that the department understands have been brought to the attention of the RCMP and that there is no expectation that Conservation deal further with those matters except as required by any subsequent official investigation.

Response from the Minister of Conservation on Behalf of the Government

The provincial government accepts the findings of this report and will comply with the Auditor General's recommendations in full. A separate review of the province's Crown Lands legislation and policies was commissioned by Treasury Board in August 2002. The recommendations of that review will be used to improve transparency and accountability in crown lands transactions.

Action will be taken immediately to carry out the Auditor General's recommendations on Hecla Island land and property transactions. The Conservation Department is disbanding the Hecla Historic Village Committee and addressing the subdivision of leases on Hecla Island. As recommended, the Department will obtain independent legal advice on the questions of (1) reviewing current land holdings on Hecla, and (2) revisiting the existing leasing arrangement for the Gull Harbour Marina.

Provincial officials will assist in any way with police investigation of the matters referred to the Justice Department. Findings relating to the conduct of provincial employees have been referred to the Civil Service Commissioner, who has authority to levy penalties for breaches of provincial legislation or conflict of interest rules.

Appendix A

GLOSSARY OF TERMS

Assignment	The transfer of ownership of "all rights, title and interest" in a lease property to another person or persons once a dwelling is at the lock up stage. A Department Assignment Form is used to facilitate this transfer.
Back-tier	Non-lakefront property that lies behind cottages, away from the shoreline of Hecla Island.
Black Book	Hecla Property Inventory – Compiled December 7, 1976. This inventory contains a listing of Hecla properties that had been expropriated under the old and new Expropriation Acts, expropriations that were abandoned, properties not expropriated or properties sold by mutual consent.
Commercial Lease	A legal agreement between the Province (the lessor) and any person (the lessee) to operate a commercial facility in a provincial park. This agreement sets out conditions under which a lessee may operate the facility. These leases are for a term not exceeding 21 years and are renewable for any additional term not exceeding 21 years.
Crown land	Real property owned by the Province of Manitoba.
De-park	To remove park land from under the control of the Provincial Parks Act.
Eligibility	Qualified or entitled to be chosen. Ex-landowners that were considered qualified to obtain a lease for lots on Hecla Island, based on the established criteria, were considered to have eligibility.
Entitlement	Ex-landowners who were ultimately able to obtain lots on Hecla Island, based on the established criteria, were considered to have entitlement.
Ex-landowners	The people who had owned land and a residence on Hecla Island at the time of Park establishment.
Expropriation	The taking of one's property under the authority of the Expropriation Act, to be used by the expropriating authority for a specific purpose. In this case the Province of Manitoba taking lands belonging to the ex-landowners for the establishment of a Provincial Park.
Forms	*Hecla Historic Village Resettlement Application Form*: The form used to request a lot in the 1997 resettlement of the Historic Village. See Appendix C.

Appendix A (cont'd.)

GLOSSARY OF TERMS

Forms (cont'd.)	*Application for a Vacation Home Lease*: An instrument used to indicate to the Department the names that are to be included on a lease when issued and whether or not the lease, if held in more than one name, is to be "Tenants in Common" or "Joint Tenants". Pre-2000 form, see Appendix E. 2000 form, see Appendix F.
Golf Pro's House	A home on Hecla Island that once belonged to a resident. This home had been leased for many years by Venture Manitoba Tours Ltd. and used as a residence by the Head Professional at the Hecla Golf Course.
Hecla Advisory Committee (HAC)	A committee established by the Department to determine eligibility criteria and review applications against those criteria. The committee was comprised of three ex-landowners and three staff from the Department.
Hecla Island Ex-Landowners Association	The ex-landowners or their descendents formed committees or associations to lobby governments for the re-settlement of Hecla Island. These groups had several names over the years including: - Descendents of Hecla Island Heritage - Hecla Island Cottage Development Committee
Hecla Historic Village Association	The name of the association formed by the present residents of the Hecla Historic Village. The executive of this association is comprised of the ex-landowner members of the HAC. This executive continues to be the committee authorized by the Department to oversee building guidelines.
Land Management Services (LMS)	A Special Operating Agency of the Manitoba government (Transportation and Government Services) that under the provision of the Land Acquisition Act, is responsible for all matters relating to the acquisition of land for the provincial government.
Lock-up Stage	The stage at which a dwelling has been completely closed in – roof, windows, siding and doors that can be locked. The interior does not have to be completed.
Memorandum of Understanding	A letter of agreement outlining the conditions under which two parties will operate for their mutual benefit.
Parks Management Plan (1988)	The plan developed in consultation with the public whose purpose was to set the overall direction for land use and development in Hecla/Grindstone Provincial Park for a period of ten years.

GLOSSARY OF TERMS

Appendix A
(cont'd.)

Proposal Call	An invitation to the private sector to submit a bid for the commercial operation outlined. Conditions of the bid including property available, timelines for submission and other applicable information are contained in the Call.
Submission Review Work Sheets	Scoring sheets used by each member of a review committee when examining bids submitted after a Proposal Call.
Terms of Reference	Conditions under which an advisory group may operate, i.e., the scope and area of work as designated by the Minister or by the Cabinet.
Vacation Home Lease	The legal agreement between the Province (the lessor) and any person (the lessee) for the use of Crown land in a Provincial Park. The agreement sets out all conditions for the use and enjoyment of this property. This agreement is for a 21-year period and is renewable for a subsequent period of up to 21 years.
Venture Manitoba Tours Ltd.	A Crown corporation that operates the Gull Harbour Resort/Golf Course complex and the Falcon Lake Golf Course.

Appendix B

HISTORICAL CHRONOLOGY

Mid 1870s

Icelandic pioneers arrived on the Hecla Island and became its first long-term residents. The Dominion government had granted them the island as part of the colony of New Iceland. The Icelanders saw in the island the potential for fishing and industry and in its isolation the possibility of self-government and the preservation of a traditional way of life.

1950s/1960s

Over the decades, and in a modest way, the community grew and flourished. By the 1950s, the island population had grown to approximately 500 people. A ferry service was introduced to the island by the provincial government in 1953.

However, due to a number of factors, the population began to decline. Commercial fishing, the main source of income for the Islanders, became unprofitable due to competition and low prices, and the farmland had never proved very productive. Also, a new system of school districts required the children to leave the island to attend high school. In 1966 the school closed. The young people left the island in search of better opportunities.

With the realization that the old way of life was dying, the Islanders began to look for solutions. Not wanting to leave their island, the older generation decided that their future rested with tourism, and they formed their own development association to promote recreational activities on the Island.

1967

The Fund for Rural Economic Development Agreement (FRED) was signed between the Province and the Government of Canada to offset the economic decline of the Interlake region. With the signing of this Agreement, Islanders' hopes for developing Hecla as a tourist destination were raised. This Agreement called for the expenditure of eighty-five million dollars in the Interlake region over a ten-year period, with three million dollars specifically allocated toward the development of a comprehensive park system for the region.

1969

A letter, in May 1969, written to Hecla Island landowners by the Minister of Tourism and Recreation, outlined the following:

- Hecla Island would be developed as a provincial park;
- In order to implement a development plan for the Park it would be necessary that the government purchase private land and buildings on the Island;
- In most cases, it would be possible to accommodate resident landowners who desired to remain on the Island. Lease back arrangements would be available for resident and non-resident land owners depending upon the phasing of the development; and

HISTORICAL CHRONOLOGY

Appendix B
(cont'd.)

- An office would be set up on Hecla Island to handle inquiries concerning acquisition, relocation and lease back arrangements.

The Hecla Provincial Park was established on August 27, 1969. In order to implement a development plan for the Park, it was necessary that the Province purchase private land and buildings on the Island. The Province began negotiations to purchase private lands on Hecla Island. Where negotiations failed expropriation was initiated. Ninety-eight properties were implicated:

- 56 properties were acquired by mutual agreement;
- 1 property was transferred to the Province;
- 18 properties were expropriated and compensation claims settled;
- 17 additional properties were expropriated but compensation was disputed. All disputed claims were ruled on by the courts;
- 3 properties had expropriation abandoned; and
- 3 properties were not expropriated.

1970s

Under the Expropriation Act in effect in the Province of Manitoba in 1971, the owner of land was allowed to object to the intended expropriation of his property. As a result of objections received from Hecla Island landowners to the intended expropriation of their land for use in a provincial park, an inquiry officer was appointed by the Attorney General of Manitoba. This inquiry was to determine whether the intended expropriation was fair and reasonably necessary for the achievement of the objectives of the expropriating authority (the Department of Tourism and Recreation). The product of this inquiry was known as the Walker Report.

The conclusions contained in the Walker Report were as follows:

- that the expropriation of cottagers was necessary except for a few cases;
- that the expropriation of cottagers was not fair regarding compensation in all cases;
- that the expropriation of permanent residents was not reasonably necessary in all cases; and
- that insufficient compensation was provided to permanent residents to relocate to equivalent accommodations.

Despite the Walker Report's conclusion that not all cottage expropriations were necessary, the Province proceeded to expropriate all cottage lots. In effect, no cottaging would be allowed on the Island. The Walker Report recommended that permanent residents on the Island, who had objected to the expropriations, be allowed to keep their property. The report indicated that complete Crown ownership of the lands contained in the Park was a convenience rather than a necessity. Subsequent to the Walker Report, three expropriations initiated were not completed; three properties never received expropriation notices; and one property was transferred to the Province for other reasons.

Appendix B
(cont'd.)

HISTORICAL CHRONOLOGY

The construction of the causeway connecting Hecla Island to the mainland, the Gull Harbour Resort and Golf Course, the Marina, beach and campground facilities was completed.

Hecla Provincial Park was officially opened in 1974.

1983

The Hecla Island Ex-Landowners Association submitted a brief to the Deputy Minister, Department of Mines and Natural Resources. The brief detailed a history of concern about the treatment received by the former Hecla Island residents at the hands of the Department. The brief went on to relate that the people from Hecla Island felt that they had been misled by the civil servants that had implemented Government policies.

The brief commented that the specific promises as stated in the May 9, 1969 letter to Hecla Island landowners were never fulfilled. Lease back arrangements, with few exceptions, were not available. The creation of income and job opportunities was not fulfilled. No office to deal with the Islanders' concerns about acquisition, relocation and lease back arrangements was ever established.

The brief also noted that since the lands that the Islanders had relinquished to the Park were sitting barren, the time had come to outline a plan that would make their feelings known. The plan listed several desires of the ex-landowners that included:

- the dedication to each of the approximately thirty landowners, who were moved to make room for the Provincial Park, of three to five acres of serviced land. This land would have at least 200 – 300 feet of shoreline and would be in the form of homestead lots reflecting the original land holdings;
- the arrangement for the possession of these lands could be negotiated with the Government and should be held in whatever form through the family line in perpetuity;
- the development of a museum which would be staffed by Islanders and would house the artifacts of the Island;
- the establishment of a fishing village which would depict the way of life on Hecla; and
- if the Government was to open any development areas such as concessions, marinas, etc, those original landowners or their descendents should have first right of refusal on such projects.

1985

Cabinet approved a recommendation that no permanent or seasonal resettlement of ex-landowners of Hecla occur. Cabinet also approved a recommendation that development of the Hecla fishing village, museum, and art/craft centre be offered to associations or businesses for public-serving purposes and interpretation/presentation of Icelandic heritage.

HISTORICAL CHRONOLOGY

Appendix B
(cont'd.)

1988

The Hecla Grindstone Provincial Parks Management Plan document was finalized.

The purpose of the Management Plan was to set the overall direction for land use and development in Hecla and Grindstone for a ten-year period. The plan was developed in a public forum over three years, resolving potential conflicts between the preservation of natural areas and the commercial use of some natural resources, and between different forms of recreation. It identified opportunities for appropriate development in both parks by the public and private sectors, and complementary development in communities adjacent to the parks.

The Management Plan reclassified Hecla from a natural park to a heritage park. This was to more accurately reflect the Park's natural and cultural endowments that were to be managed and developed for appreciation and enjoyment by the public. The Park would reflect and preserve Icelandic cultural history, native cultural history, provide a range of accommodation from high-quality resort to primitive campsites, and enhance the water and marine-based recreational opportunities of this part of Lake Winnipeg. As a recreation park, Grindstone was designed to accommodate large numbers of people and to be a major cottaging area on Lake Winnipeg.

The Management Plan also established a zoning scheme. The Plan detailed the purpose of the various land-use zones and defined the activities permitted within each zone. The historic village area was designated to be a cultural heritage zone. As such, activities, services and facilities had to reflect and preserve the Icelandic settlement. The refurbishing of existing structures or new construction had to conform to prescribed conditions as developed.

1991

The Hecla Islanders Cottage Development Committee submitted the Ex-Hecla Island Landowners and Descendents Cottage Lot Development Proposal to the Department. The Committee identified the need to rejuvenate the economy of the Park. Allowing the ex-landowners to re-inhabit the Island would provide a reliable workforce for Park management, reintroduce the Icelandic culture and heritage to the Island, and help the Island develop tourism. The proposal outlined the following:

- a redevelopment of sixty original homestead lots in the historic village area of 150 feet x 150 feet;
- a forty lot cottage development at the West Quarry on the north end of the Island of 100 feet x 150 feet;
- services for the above lots should include roads, hydro, water and sewer; and
- that a committee be formed made up of members of their group along with Departmental staff to assist in the allocation of lots, control of suitable development, financing, and other relevant factors.

Appendix B
(cont'd.)

HISTORICAL CHRONOLOGY

1992

The Hecla Historic Village was opened to the public. The historic village restoration included the refurbishing of three key buildings: the school; boarding house; and yellow frame house (museum). The community hall was also re-created.

1994

Canada and Manitoba announced the commencement of the Manitoba Lowlands national park feasibility study. The study focused on three areas in Manitoba's Interlake including Hecla/Grindstone Provincial Park. In early 1996, the governments announced that as a result of this study, Hecla Island would remain a provincial park and would not become a national park.

1996

When the Minister of the day, became aware that Parks Canada was not interested in making Hecla Island a part of a national park, he decided that it was a logical time to repopulate the Island. He indicated that this re-population of the Island would help alleviate economic problems and promote tourism.

Departmental studies and development concepts concerning a cottage subdivision on Hecla Island began in April 1996. This was an ongoing process that continued into 1997. The chosen alternative was a cottage development on the north shore of the Island.

1997

In letters addressed to the Premier of Manitoba, dated February 27 and March 13 from the president of the Descendents of Hecla Island Heritage, concern was expressed that the ex-landowners of Hecla Island were not being given first opportunity to secure cottage lots that the Department was developing at the north shore of the Island. The letters noted that the ex-landowners had always believed, and were always told by Ministers, Deputy Ministers, and senior Department people, that if the Island was ever to have cottage development that they would be considered first and foremost. The letters also indicated that the ex-landowners had been working in harmony with the Department in restoring the Icelandic village, supplying information, and volunteering from the time the Park officially opened.

On April 16 the Minister of the Department responded to the above letters. He noted that a method of allocation for the lots in the proposed north shore development had yet to be determined. The letter advised that the Minister had asked two officials within the Department to initiate discussions with the ex-landowners on this matter.

In a news release dated May 15, the Minister of the Department announced the development of a cottage subdivision that would provide ex-landowners and others with the opportunity to lease a lot along the north shore of Hecla Island. Lots in the subdivision would become available by a draw in the late fall of 1997.

HISTORICAL CHRONOLOGY

Appendix B
(cont'd.)

During deliberations, to develop a process to permit the ex-landowners first right of refusal on lots on the north shore, the concept of re-settlement of the heritage landscape around the village was identified and explored in some detail and was approved by Cabinet. This decision led to the establishment of the Hecla Advisory Committee (HAC) which was to develop a process to accomplish resettlement of the Historic Village in a fair and objective manner.

Appendix C | HECLA ISLAND HISTORIC LANDS RESETTLEMENT INFORMATION PACKAGE

Hecla Island Historic Lands Resettlement Information Package

Manitoba Natural Resources is facilitating the resettlement of the Hecla Island village area, and is creating a new cottage subdivision on the north shore of the island. The ex-landowners and their direct descendants, whose Hecla Island homes were impacted by the establishment of Hecla Provincial Park, are invited to be a part of the resettlement. This information package outlines which ex-landowners are eligible, and how they may obtain a lease for a lot in one of these subdivisions.

Eligibility Criteria:

This opportunity is available to ex-landowners who owned a residence on Hecla Island in 1969 at the time that Hecla Provincial Park was established, or their spouse, son(s), or daughter(s). The opportunity is also extended to ex-cottagers who owned land on the island. Ex-landowners who entered into a voluntary sale of their property to a third party other than the Province of Manitoba after the park was established and current landowners on Hecla Island, are not eligible.

The general intent of this resettlement program is to provide one lot per original Hecla Island family. To accomplish this, each original landowner who owned land at the time the park was established (or the spouse, son, or daughter of that landowner) will be eligible to lease one lot. Where more than one person in an original Hecla Island family is eligible, those persons must decide who will apply for the one lot that is available to them. In circumstances where more than one landowner was listed on a title, only one lot will be allocated. If more complicated circumstances arise, an eligibility committee composed of ex-landowners and Manitoba Natural Resources staff members will review the applications and make recommendations to the Minister of Natural Resources as to who is eligible.

Location:

1. The Historic Lands subdivision lots are located on lands previously settled on the eastern shore of Hecla Island in Hecla Provincial Park. The lots are within the Heritage Land Use Category with the majority located south of Hecla Village.

2. Fifteen additional lots are also available at the North Shore subdivision (see accompanying maps). Alternatively, ex-landowners may apply for one of these 15 lots (see page 3).

Lot Price for qualified ex-landowners: $5000.00 (either subdivision).

HECLA ISLAND HISTORIC LANDS RESETTLEMENT INFORMATION PACKAGE

Appendix C
(cont'd.)

Lots:

All lots in the Historic Lands subdivision are 5 acres in size. Lot frontages on the road and/or lake are 330 feet except in the section in which Hecla village is located where lot widths are 220 feet. Lots will not be allowed to be subdivided. Further increments of land in 5 acre "back-lot" parcels immediately behind each lot may be available for lease to the lot holder for non-residential purposes at an additional annual fee.

The North Shore lots are 100 feet wide, and 150 feet deep (about one-third of an acre).

Building Requirements:

In the Historic Lands subdivision, one principal residence will be allowed on each lot that fronts the road and/or lake. Additional residences or cottage buildings will not be permitted on non-residential "back lots". However, barns, sheds and other similar out-buildings may be constructed on "back lots". All buildings on the Historic Lands lots will be subject to design controls as yet to be developed with the assistance of the Hecla Ex-landowners Association. Design controls will establish an historic character to the subdivision. Controls will regulate building size, shape, and style, exterior materials and colour, and types of fencing, sheds, etc. Cost of construction may be higher than typical cottage construction. A maximum square footage for the principal residence and outbuildings is soon to be established.

In the North Shore subdivision, standard provincial cottage development guidelines will apply.

Lot holders in both areas will be expected to develop their own water supply and to conform to provincial regulations regarding sewage disposal. Lot holders will be responsible for providing electrical service to the lot from existing or soon to be installed subdivision service lines.

Appendix C (cont'd.)

HECLA ISLAND HISTORIC LANDS RESETTLEMENT INFORMATION PACKAGE

Allocation Process

The allocation of lots to eligible ex-landowners or their descendants will occur in three stages:

Stage 1. Those who want a 5 acre lot that is a part of their original holding and within the proposed Historic Lands subdivision may choose that lot. Those that reject such a lot will have a choice of lots in Stage 3.

Stage 2. Those whose lands are not available as part of the 50 lots in the Historic Lands subdivision will be able to participate in a draw for their choice of lots that remain in the Historic Lands subdivision at the conclusion of Stage 1, or for a lot in the 15 lots set aside in the Hecla North Shore subdivision.

Stage 3. Those who did not want a part of their original land holding will be able to participate in a draw for their choice of a lot from any lots that remain in the Historic Lands Subdivision at the conclusion of Stage 2, or for any lots that remain from the 15 set aside in the North Shore subdivision.

Available Lease:

Possession and lot development can occur only after full payment is made. An annual permit will be issued at that time. Successful applicants must construct a dwelling to "lock-up" stage prior to a lease being issued. This must occur before December 31, 2000 for the Historic Lands lots and by December 31, 1999 for the North Shore lots. The lease will be a standard 21 year renewable lease. Lots will not be assignable (may not be sold) until a dwelling is completed to "lock-up" stage and a lease has been issued.

For both subdivisions, the annual land rental fee will be $300.00 in 1998/99 (based on 4% of $7500.00, the 1981 value of leased lots in the area). The annual "Park Districts" service fee is projected in 1998/99 to be $266.00 for the Historic Lands lots, and $296.00 for the North Shore lots. An annual $300.00 "chief place of residence" fee will be levied against those lots which become the chief place of residence for the lot holder.

HECLA ISLAND HISTORIC LANDS RESETTLEMENT INFORMATION PACKAGE

Appendix C
(cont'd.)

Application: Applications may be submitted on the attached form by eligible persons. **A refundable deposit of $500.00 (money order, certified cheque, or bank draft) made out to the Minister of Finance must accompany the application. Failure to include a deposit in this manner will result in the application not being considered.** Applications must be postmarked or submitted in person by 4:30 P.M. on October 31, 1997 and are to be submitted to:

Hecla Resettlement Program
Director of Parks and Natural Areas
Box 51, 200 Saulteaux Crescent
Winnipeg, Manitoba
R3J 3W3

Notification: Manitoba Natural Resources will notify applicants by November 20, 1997 of their eligibility for a lot. Lots other than those assigned in Stage 1 will be assigned in a Lot Draw to be held at 12 Noon on November 29, 1997 at the Hecla Community Hall in Hecla, Manitoba. All applicants (other than those in Stage 1) must attend the draw or send someone authorized to act in their place. The first applicant drawn in Stage 2 will have first choice of all remaining lots in the Historic Lands Subdivision or lots in the block of 15 lots in the North Shore Subdivision. This will continue until all eligible applicants in Stage 2 have drawn. The same procedure will then apply to the Stage 3 applicants. Deposits become non-refundable, when an applicant chooses a lot.

For those lot holders in the Historic Lands subdivision, full payment (an additional $4500.00) must be made by successful applicants within 1 year of the draw date. In the case of the North Shore Subdivision, full payment must be made by March 31, 1998. In the event of a default of payment, deposits are non-refundable.

September 26, 1997

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Appendix C (cont'd.)

HECLA ISLAND HISTORIC LANDS RESETTLEMENT INFORMATION PACKAGE

Hecla Island Historic Lands Resettlement Application Form

Name of Applicant: _____

Address: _____

_____

_____

Telephone: Residence:_____ Business:_____

Legal Description of Original Land _____

_____

You are (check one):

☐ Original Landowner

☐ Spouse, Son or Daughter
Name of Original Landowner_____

Lot Allocation and Preference:

A. *Indicate whether a lot is available within your original holding in the Historic Lands subdivision as shown on the attached Historic Lands map:*

Lot is not available _____(please circle) or, Lot is available, map lot # is: _____

B. *If a lot is available to you, indicate whether you choose that lot:*

Yes, I choose that lot _____, or
No, I do not choose that lot and will choose a different lot in Stage 3 _____

C. *If you are not choosing a lot on your original holding, or no lot is available on your original holding, please indicate whether you prefer to choose a lot in:*

the Historic Lands subdivision _____, or

the North Shore subdivision _____

Note: This application is not valid unless accompanied by a certified cheque, bank draft, or money order for $500.00.

PROVINCE OF MANITOBA LEASE OF A VACATION HOME LOT

Appendix D

PROVINCE OF MANITOBA

MANITOBA NATURAL RESOURCES

Lease No.

LEASE OF VACATION HOME LOT IN HECLA/GRINDSTONE PROVINCIAL PARK MADE IN DUPLICATE, DATED JUNE 1, 1999,

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF MANITOBA, REPRESENTED BY THE HONOURABLE MINISTER OF NATURAL RESOURCES,

("The Crown")

- and -

made pursuant to The Provincial Parks Act.

The Crown and the Lessee agree as follows:

PART 1 - TERM OF AGREEMENT AND DESCRIPTION OF PREMISES

1(1) Subject to the terms of this Agreement, the Crown hereby leases to the Lessee the land described below (the "premises") for the term of twenty-one (21) years, commencing on May 1, 1999, and ending on April 30, 2020.

Description of Premises

Lot , Plan 20002, Hecla Village within Hecla/Grindstone Provincial Park, reserving to the Crown all mines and minerals, together with right to enter, locate, prospect, mine for, and remove minerals.

PART 2 - QUIET ENJOYMENT

2(1) Subject to the terms of this Agreement, the Crown covenants with the Lessee for the quiet enjoyment of the premises.

PART 3 - PAYMENT OF LAND RENTAL AND TAXES

3(1) The Lessee shall pay to the Crown in each year of the term of this Agreement rent equal to the annual land rental fee and all service fees prescribed from time to time by the Regulations under The Provincial Parks Act, in accordance with such Regulations and this Agreement within 30 days of receipt of an invoice therefor from the Crown. The Lessee acknowledges that the current annual land rental fee is $ and the current service fee is $ per year.

3(2) Payments of the rent and the service fees shall be made in accordance with the directions contained in the invoice from the Crown.

Appendix D (cont'd.)

PROVINCE OF MANITOBA LEASE OF A VACATION HOME LOT

3(3) The Lessee shall pay all taxes, rates, duties and assessments whatsoever, whether municipal or otherwise, now or hereafter charged on the premises or in respect of the Lessee's use and occupation thereof. Some form of advance public notice shall be provided for changes in these taxes, rates, duties and assessments.

3(4) The Lessee shall pay to the Crown interest on any arrears of rent or service fees at a rate equal to the rate fixed from time to time by the Minister of Finance for the Province of Manitoba under section 25(1) of The Financial Administration Act. Failing such rate being fixed, interest shall be payable thereon at a rate equal to the rate fixed from time to time by the Crown.

3(5) The Lessee shall pay to the Crown an amount equal to any and all goods and services taxes now or hereafter imposed on, or collectible by, the Crown with respect to any amounts payable by the Lessee to the Crown hereunder, whether characterized as a goods and services tax, sales tax, value added tax or otherwise ("Sales Taxes"), it being the intention of the parties that the Crown shall be fully reimbursed by the Lessee with respect to any and all Sales Taxes payable or collectible by the Crown now or in the future.

3(6) The Lessee is responsible for and shall pay any and all costs, charges, impositions and expenses related to the premises, including without limitation, all electric power charges.

3(7) The Lessee shall pay all amounts payable to the Crown hereunder without any deduction or set-off whatsoever.

PART 4 - USE OF PREMISES

4(1) The Lessee shall use the premises as a residential lot for vacation home purposes and for no other purpose without prior permission in writing from the Crown.

4(2) The Lessee shall not use or allow the use of the premises as a chief place of residence for the Lessee or any other person without prior permission in writing from the Crown, which consent shall not be unreasonably or arbitrarily withheld.

4(3) Subject to subsection 4(4), the Lessee shall not construct, erect or alter any buildings or structures on the premises except in accordance with:

(a) regulations under The Provincial Parks Act;

(b) the guidelines for vacation home lots established by the Crown from time to time; and

(c) prior approval in writing from the Crown.

4(4) The Lessee and its officers, directors, agents, invitees and employees as applicable shall be bound by the rules, regulations and guidelines made by the Crown from time to time. All such rules, regulations and guidelines will be deemed to be incorporated into and form part of this Agreement. Some form of advance public notice shall be provided for changes in these rules, regulations and guidelines.

4(5) The Lessee shall, by no later than December 31, 2000, construct a residence on the premises, that complies with the regulations under The Provincial Parks Act and the guidelines for vacation home lots established by the Crown from time to time, to the point where the entire exterior of the residence is complete and finished to the satisfaction of the Crown.

PROVINCE OF MANITOBA LEASE OF A VACATION HOME LOT

Appendix D (cont'd.)

4(6) The lessee shall construct and maintain any residences and other buildings and development on the lot in a manner that complies, to the satisfaction of the Crown, with the guidelines as specified in the "Hecla Historic Lands Design Guidelines" published for Manitoba Natural Resources, a copy of which has been provided to the Lessee. The Lessee shall further complete, to the satisfaction of the Crown, the work outlined in the letter from the Hecla Village Advisory Committee contained in Appendix "A" to this lease. The Lessee shall also complete any work, to the satisfaction of the Crown, that may be specified from time-to-time in writing by the Hecla Village Committee and is approved by the Director of Parks and Natural Areas Branch.

PART 5 - MAINTENANCE OF PREMISES

5(1) The Lessee agrees:

(a) to keep the premises, and all buildings and structures thereon, in a clean and sanitary condition free from inflammable materials, other than those contained in containers approved by the Canadian Standards Association;

(b) to comply with all federal, provincial and municipal by-laws, acts and regulations relating to the Lessee and/or the premises including, but not limited to, The Provincial Parks Act and Regulations and The Environment Act and Regulations;

(c) not to commit waste or damage the premises;

(d) to keep the premises, and all buildings and structures thereon, in good and safe repair; and in a proper and neat condition and to repair in accordance with any notice from the Crown;

(e) to allow a person or persons on behalf of the Crown to enter the premises, including all buildings and structures, at all reasonable times to examine the state of repair;

(f) not to cut or remove any trees without prior written consent of the Crown, unless such trees are dead.

5(2) The Lessee shall not release upon the premises or any part thereof any Pollutants but if Lessee does release any Pollutants, the Lessee shall, at its expense immediately give the Crown notice of the release; remove the Pollutants from the premises in a manner which conforms with all laws and regulations covering the movement of the Pollutants as soon as reasonably practicable; and obtain from an independent consultant designated or approved by the Crown a report verifying the complete and proper removal thereof from the premises, if requested by the Crown, otherwise the Lessee shall report as to the extent and nature of any failure to comply with this Section. Any such Pollutants shall not become the property of the Crown notwithstanding any rule of the law to the contrary (save and except where such Pollutants are brought or created upon the premises by the Crown or its servants, employees or agents, provided such person is not the Lessee or an officer, director, agent or employee of the Lessee). At the option of the Crown, any substance contaminated by such Pollutants shall become the property of the Lessee and at the Lessee's expense, the Lessee or, at the Crown's option the Crown, shall remove the contaminated substance from the premises and make good any damage done in so doing. The Lessee shall indemnify and save harmless the Crown from all costs or expenses, liabilities, losses, claims, damages (including consequential damages, interest, penalties, fines or monetary sanctions), legal costs or fees on a solicitor and own client basis, and fees or expenses of professional consultants incurred by the Crown by reason of Pollutants being present on the premises and resulting from the Lessee's use or occupation of the premises or the breach of any warranty or covenant of the Lessee in this Section. This indemnity shall survive the termination of this Agreement, notwithstanding anything to the contrary in this Agreement.

Appendix D (cont'd.)

PROVINCE OF MANITOBA LEASE OF A VACATION HOME LOT

5(3) In paragraph 5(2), "Pollutants" means any substance which is hazardous to persons or property and includes, without limitation radioactive materials; explosives; toxic substances; any substance declared to be hazardous or toxic, or the use or transportation of which or the release of which into the environment is prohibited, regulated, controlled or licensed under any law or regulation now or hereafter enacted or promulgated by any governmental authority having jurisdiction over the premises or the Lessee; and any:

(a) substance that, if added to water, would degrade or alter or form part of a process of degradation or alteration of the quality of that water; or solid, liquid, gas odour or combination of any of them that, if emitted into the air, would create or contribute to the creation of a condition of the air;

to the extent that it:

(b) endangers the health, safety, or welfare of persons or the health of animal life, interferes with normal enjoyment of life or property, or causes damage to plant life or to property.

PART 6 - NO ASSIGNMENT OR SUBLEASE WITHOUT CONSENT

6(1) Subject to subsections 6(2), 6(3) and 6(4), the Lessee shall not assign this Agreement or sublet the premises without the prior written consent of the Crown, that consent not to be unreasonably withheld. In the event of a dispute over the assignment of this lease, the Minister may appoint an Advisory Board, as provided under the Provincial Parks Act, for a recommendation. If the Lessee is a corporation, any change in ownership or control of the Lessee is deemed to be a proposed assignment or subletting.

6(2) Subject to paragraph 6(3), the Crown shall not unreasonably withhold consent to the assignment of this Agreement for collateral (financing and security) purposes.

6(3) This Agreement shall be binding upon the executors, administrators, heirs, successors and any permitted assigns of the Lessee.

6(4) For greater certainty, the Crown has no obligation to survey or resurvey the premises, and this Agreement shall create no such obligation of the Crown to survey or resurvey the premises.

PART 7 - INDEMNITIES

7(1) The Lessee shall use due care in the occupation of the premises to ensure that no person is injured, no property is damaged or lost and no rights are infringed.

PROVINCE OF MANITOBA LEASE OF A VACATION HOME LOT

Appendix D
(cont'd.)

7(2) The Lessee shall indemnify and save harmless the Crown, its officers, employees and agents from and against all claims, liabilities and demands with respect to:

(a) any injury to persons (including death), damage or loss to property caused by, or related to the occupation of the premises or the performance of this Agreement or the breach of any term or condition of this Agreement by the Lessee, any agent, invitee, officer, director or employee of the Lessee or any other person authorized by the Lessee to occupy the premises, and

(b) any omission or wrongful or negligent act of the Lessee, or of any other person authorized by the Lessee, any agent, invitee, officer, director or employee of the Lessee to occupy the premises;

unless such claims, liabilities, and demands arise out of the acts or omissions of the Crown, its officers, employees or agents, provided such person is not the Lessee or an officer, director, agent or employee of the Lessee. This paragraph shall survive the termination or expiration of this Agreement.

7(3) It is the responsibility of the Lessee to arrange for his/her own insurance coverage(s). The Crown expects that the Lessee will consult with his/her insurance broker, or insurance advisor, regarding the appropriate coverage(s).

PART 8 - TERMINATION AND EXTENSION

8(1) Provided that there has been no uncured default by the Lessee, this Agreement may be renewed at the option of the Lessee by notice as set out below for one additional term of twenty-one (21) years upon the same terms and conditions, save and except for rent and service fees which shall be determined by the Crown in accordance with then current laws, regulations or policies respecting rental rates and service fees for rental property of this type. The Lessee may exercise the Lessee's option to renew this Agreement at any time after six (6) months before the expiration of the Agreement and prior to two (2) months before the expiration of the Agreement.

8(2) At the end of the term hereof or any renewal term, this Agreement will expire.

8(3) The Lessee may terminate this Agreement effective April 30th of any year of this Agreement by giving notice in writing to the Crown at least one (1) year prior to the date of termination.

8(4) Without restricting any other remedies available, the Crown may, at its sole option, immediately terminate this Agreement in writing if:

(a) the Lessee has failed to make any payment due hereunder, has failed to construct a residence on the premises in accordance with subsection 4(4) or has failed to comply with any other term or condition of this Agreement and has not remedied that failure to comply within ninety (90) days of receipt of notice in writing from the Crown;

(b) the Lessee makes an assignment for the benefit of creditors, becomes bankrupt or insolvent, takes the benefit of, or becomes subject to, any statutes that may be in force relating to bankrupt or insolvent debtors (the appointment of a receiver or receiver and manager of the assets of the Lessee being conclusive evidence of insolvency), or if any certificate or order is made or granted for the winding-up or dissolution of the Lessee, voluntarily or otherwise;

(c) the Lessee suffers a lien under The Builders' Lien Act (Manitoba) or any similar or successor legislation registered against the premises or the Crown's interest therein and does not contest the validity or the amount of the lien and do all things necessary to obtain and register a discharge forthwith after the lien has come to the notice of the Lessee.

Appendix D (cont'd.)

PROVINCE OF MANITOBA LEASE OF A VACATION HOME LOT

8(5) Where the Lessee terminates this Agreement in accordance with paragraph 8(3), or the Crown terminates this Agreement in accordance with paragraph 8(4), or upon the expiration of the term or any renewal term of this Agreement:

(a) The Lessee shall deliver up possession of the premises to the Crown and shall not remain in possession of the premises following the expiration or termination of this Agreement;

(b) at the option of the Crown:

(i) the Lessee and the Crown may agree on the fair market value of the buildings or structures added to the premises by the Lessee and the Crown may purchase such buildings or structures by paying to the Lessee that fair market value, or

(ii) the Lessee shall remove all buildings and structures added to the premises by the Lessee within six months of such expiry or termination, and where those buildings and structures are not removed within six months they shall become the property of the Crown. At the end of such six months, any assets left on the property as at such date shall vest in the Crown, and the Lessee shall be deemed to have released and quit-claimed any interest therein to and in favour of the Crown. No compensation or payment whatsoever shall be payable therefor by the Crown to the Lessee in such event.

8(6) Where the Crown terminates this Agreement in accordance with paragraph 8(4) in instances where collateral assignments are recorded, it shall provide notice in writing of such termination to the holder of such collateral assignments (the "Security Holder"). The Security Holder:

(a) shall then be allowed a reasonable time frame of not less than 90 days as stipulated in the notice, to cure defaults of the Lessee, and upon doing so this Agreement shall be deemed not to have terminated;

(b) shall not be obligated to go into possession; and

(c) shall be allowed to assign the Lessee's interest in this Agreement to a third party purchaser, subject to the prior written consent of the Crown being required, but which shall not be unreasonably withheld; provided that as a condition of any such assignment, such subsequent assignee shall execute such documentation as the Crown considers reasonable to bind the assignee directly to the Crown on the terms and conditions as contained in this Agreement, and all defaults of the Lessee shall be cured and brought to good standing. In the event of such permitted assignment, this Agreement shall be deemed not to have terminated.

PROVINCE OF MANITOBA LEASE OF A VACATION HOME LOT

Appendix D
(cont'd.)

8(7) Notwithstanding any other provision of this Agreement, the Crown may terminate this Agreement at any time by giving the Lessee ninety (90) days notice in writing, and upon the expiration of such period of ninety (90) days from the giving of the notice, this Agreement and the term hereby demised shall absolutely cease and determine and be at an end. Upon such termination:

(a) The Lessee shall deliver up possession of the premises to the Crown and shall not remain in possession of the premises following the expiration or termination of this Agreement;

(b) The Lessee shall, within 180 days of such expiry or termination, remove all personal property of the Lessee from the premises; and

(c) At the option of the Lessee:

(i) the Lessee may require the Crown, by notice in writing to the Crown within 180 days of such expiry or termination, to pay to the Lessee the fair market value of the buildings or structures located on the premises and the Crown shall purchase such buildings or structures by paying the Lessee that fair market value. When determining such fair market value, regard shall not be had to the fact that this Agreement has been terminated by the Crown in accordance with this section, and accordingly such fair market value shall include the fair market value of a permitted assignment of the Lessee's rights under this agreement. Such fair market value shall be determined by agreement between the Crown and the Lessee or, if they fail to reach an agreement within 180 days of such notice being received by the Crown, by reference to the Land Value Appraisal Commission, or such other body as may hereafter be substituted therefor from time to time; or

(ii) the Lessee shall remove all buildings and structures added to the premises within 180 days of such expiry or termination,

and where no such notice has been given by the Lessee in accordance with subsection 8(7)(c)(i) above and where those buildings and structures are not removed as set out in subsection 8(7)(c)(ii) above, they shall become the property of the Crown. At the end of such 180 days, any assets left on the premises as at such date shall vest in the Crown, and the Lessee shall be deemed to have released and quit-claimed any interest therein to and in favour of the Crown. No compensation or payment whatsoever shall be payable therefor by the Crown to the Lessee in such event, except any payment arising from the giving of notice as provided in subsection 8(7)(c)(i) above.

PART 9 - DISPUTES

9(1) In the event of a dispute between the parties to this Agreement, the Minister may appoint an Advisory Board, as provided for under The Provincial Parks Act, for a recommendation.

PART 10 - ENTIRE AGREEMENT

10(1) This document contains the entire Agreement between the parties. There are no undertakings, representations, warranties, covenants, guarantees, agreements or promises, express or implied, verbal or otherwise, other than those contained in this Agreement.

10(2) No amendment or change to, or modification of, this Agreement shall be valid unless it is in writing and signed by both parties.

Appendix D (cont'd.)

PROVINCE OF MANITOBA LEASE OF A VACATION HOME LOT

PART 11 - APPLICABLE LAW

11(1) This Agreement shall be governed by, interpreted, performed and enforced in accordance with the laws of Manitoba.

PART 12 - NOTICES

12(1) Any notice or other communication to the Crown under this Agreement shall be in writing and shall be delivered or sent by mail, postage prepaid to: Parks and Natural Areas Branch, Manitoba Natural Resources, Box 51, 200 Saulteaux Crescent, Winnipeg, Manitoba R3J 3W3 .

12(2) Any notice or other communication to the Lessee under this Agreement shall be in writing and shall be delivered personally to the Lessee or an officer, director or employee of the Lessee or sent by mail, postage prepaid, to the last known address on file in the office of the Director of Parks and Natural Areas.

12(3) Any notice or communication sent by mail shall be deemed to have been received on the third (3rd) business day following the date of mailing. If mail service is disrupted by labour controversy, notice shall be delivered personally.

12(4) Either party may provide notice of change of address to the other in writing and thereafter all notices or communications shall be provided to the new address.

12(5) Any notice or other communication signed by any employee, officer or minister of the Crown acting in that capacity shall be deemed for the purposes of this Agreement to be a notice or other communication executed by the Crown.

PART 13 - ADDITIONAL PROVISIONS

13(1) Time shall be of the essence of this Agreement.

13(2) If any provision of this Agreement is illegal or invalid or unenforceable at law it shall be deemed to be severed from this Agreement and the remaining provisions shall nevertheless continue to be in full force and effect.

13(3) No waiver of any default under this Agreement shall be binding unless acknowledged in writing by the Crown. Any condoning, excusing or overlooking by the Crown of any default shall not operate as a waiver of the Crown's rights hereunder in respect of any subsequent default.

13(4) All headings in this Agreement are inserted for convenience of reference only and will not affect the construction and interpretation of this Agreement.

13(5) If two or more sign this Agreement as Lessee, the liability of each to pay rent and service fees and to perform all other obligations hereunder shall be joint and several. If the lessee is a corporation, each person signing on behalf of the Lessee by so signing hereby agrees to guarantee to the Crown the performance by the Lessee of all obligations of the Lessee hereunder, and each such person shall be jointly and severally liable with the Lessee as lessee hereunder.

13(6) If the Lessee remains in possession of the premises after the termination of this Agreement and the Crown accepts rent, the tenancy, in the absence of written agreement, will be from month to month only and shall be subject to all terms of this Agreement, including rent, except that the tenancy shall be from month to month.

13(7) The Lessee shall not be entitled to file a caveat against title to the premises respecting this Agreement under The Real Property Act (Manitoba) as it may be hereafter amended, replaced or substituted from time to time.

PROVINCE OF MANITOBA LEASE OF A VACATION HOME LOT

Appendix D
(cont'd.)

13(8) That nothing herein contained shall create any liability on the part of the Crown or Manitoba Hydro for any damage of any kind.

13(9) This lease shall in no way limit Manitoba Hydro's or the Crown's right to raise or lower the water levels on any body of water which may affect this parcel of land and Manitoba Hydro or the Crown shall not be held liable for changes in the water level. Furthermore, this lease does not imply any guarantee of water levels at this parcel of land.

13(10) That all-habitable buildings shall have their underside of main supporting beam(s) not lower than an elevation of 720.0 feet, Geodetic Survey of Canada datum.

This Agreement has been executed by the Minister of Natural Resources or his duly authorized representative on behalf of the Province of Manitoba and by the Lessee on the dates noted below.

SIGNED IN THE PRESENCE OF: FOR THE PROVINCE OF MANITOBA

_____
Witness

_____
Minister of Natural Resources

_____
Date

FOR THE LESSEE

_____
Witness

_____
Lessee

_____
Lessee

_____
Lessee

_____
Lessee

_____
Date

Appendix E

APPLICATION FOR A VACATION HOME LEASE - DATED 1994

APPLICATION FOR A VACATION HOME LEASE
____ RENEWAL
____ NEW

Manitoba
Natural Resources
Parks and Natural Areas

For Cashier's Use Only
Acc No._____
Rev Code 1-1-3

I/We (Present Lotholder(s) _____

Address:_____

Phone: _____, hereby apply for a renewal or new lease to occupy

Lot _____, Block _____, Plan _____, Lake _____

I declare that there is on this lot, a summer cottage which has been constructed and maintained in accordance with the minimum building standards and plans submitted.

Please mark an "X" in the appropriate box. The following areas must be completed or your application will be returned.

It is requested that the registration of the lease when issued:

☐ 1. **Remain as presently shown on the Vacation Home Lease/Permit.**
☐ 2. **Be altered to include the following name(s).**
☐ 3. **Be altered to delete the following name(s).**

Full Name(s), Address and Relationship	Signature(s)
_____	_____
_____	_____
_____	_____

Please indicate how you wish the lease to be held:

☐ 1. **As Tenants in Common (or)**
☐ 2. **As Joint Tenants and not as Tenants in Common.**

It is agreed and understood that the fees and annual rental set by regulation may be adjusted by the minister.

Date _____, 19 __ _____

Signature of Lotholder(s)

_____

_____

_____

APPLICATION FOR A VACATION HOME LEASE - DATED 1994

Appendix E
(cont'd.)

FIELD REPORT

1. Type of buildings: cottage ___ guesthouse ___ garage ___ storage shed ___
2. Sewage disposal system: septic tank and field ___ holding tank ___ sullage pit ___ privy ___
3. Development according to approved plans: yes ___ no ___
4. Lot brushed clean and free of flammable materials _____
5. Remarks:

_____

_____

_____

_____

Inspecting Officer _____ Date _____, 19 ___

Dock _____ Boathouse _____ Other _____

Cottage: Backtier ___ Lakefront ___ Isolated ___

Approved: _____
(Director of Parks and Natural Areas)

MG 2685 (Rev. 94)

Appendix F

APPLICATION FOR A VACATION HOME LEASE - DATED 2000

APPLICATION FOR A VACATION HOME LEASE
_____ RENEWAL
_____ NEW

Manitoba
Conservation
Parks and Natural Areas

For Cashier's Use Only

Acc No. _____
Rev. Code _____

I/We (Present Lotholder(s) _____

Address: _____

Phone: _____ , hereby apply for a renewal or new lease to occupy

Lot _____ , Block _____ , Plan _____ , Lake _____

Please mark an "X" in the appropriate box. The following areas must be completed or your application will be returned.

It is requested that the registration of the lease when issued:

☐ **1. Remain as presently shown on the Vacation Home Lease/Permit.**

☐ **2. Be altered to include the following name(s).**

☐ **3. Be altered to delete the following name(s).**

_____ _____
Full Name(s), Address and Relationship Signature(s)

_____

_____

_____

Please indicate how you wish the lease to be held:

☐ **1. As Tenants in Common (or)**

☐ **2. As Joint Tenants and not as Tenants in Common.**

It is agreed and understood that the fees and annual rental set by regulation may be adjusted by the minister.

Date _____ , 20____ _____
Signature of Lotholder(s)

_____

_____

_____

APPLICATION FOR A VACATION HOME LEASE - DATED 2000

Appendix F
(cont'd.)

FOR PARK DISTRICTS USE ONLY

FIELD REPORT

---

1. Type of buildings: cottage ___ guesthouse ___ garage ___ storage shed ___
2. Sewage disposal system: septic tank and field ___ holding tank ___ sullage pit ___ privy ___
3. Development according to approved plans: yes ___ no ___
4. Lot brushed clean and free of flammable materials _____
5. Remarks:

_____

_____

_____

_____

Inspecting Officer _____ Date _____ , 20 ___

Dock Boathouse Other

Cottage: Backtier _____ Lakefront _____ Isolated _____

Approved: _____
(Director of Parks and Natural Areas)

MG 2685 (Rev. 00)

Appendix G

ASSIGNMENT FORM

Assignment Form

Manitoba
Natural Resources
Parks and
Natural Areas

For Cashier's Use Only

VHL/VHP # _____
Rev. Code 1-1-3

VENDOR'S SECTION

I/We _____ of the city/town/etc.
of _____ in the province of _____ being holder of
permit/lease No. _____ expiring _____ covering the following:
LOT _____ BLOCK _____ PLAN _____ SUBDIVISION _____

Assign all my right, title and interest in and to the said permit/lease to:

_____ (a) as Joint Tenants
surname given name(s) (b) as Tenants in Common

of _____
street address city/town/etc. province postal code

_____ _____ _____
witness to lotholder(s) signature lotholder signature date

_____ _____ _____
vendor's phone number(s) lotholder signature date

I further certify that I have not executed or done or been party or privy to any deed or thing by which the permit/lease has been charged, assigned, encumbered, affected or impeached in title.

PURCHASER'S SECTION

I/WE CERTIFY THAT THE ANNUAL FEES ARE PAID IN FULL

I/we as assignee to the above permit/lease have read the terms and conditions of said lease/permit and hereby consent and agree with The Government of Manitoba to observe and perform all of the terms and conditions, and assume all responsibility for and costs relating to non-complying structures, location of structures and overall appearance of the lot, and agree to make improvements to ensure compliance with The Provincial Park Lands Act and regulations and terms and conditions of the lease/permit as directed by the Parks and Natural Areas Branch.

_____ _____ _____
witness to purchaser(s) signature purchaser signature date

_____ _____ _____
purchaser phone number(s) purchaser signature date

NOTE: It is recommended you obtain a surveyor's certificate verifying the location of all structures on the above lot. It is the responsibility of the permittee/lessee to ensure that all structures are located within the surveyed lot boundary. The Parks and Natural Areas Branch will require a copy of the surveyor's certificate if obtained. This assignment deals only with the permit/lease. If buildings are involved in this transaction, it is suggested that the purchaser consult a solicitor.

FOR OFFICE USE ONLY

I certify that the within assignment is registered in the Office of the Director, Parks and Natural Areas Branch

this _____ day of _____, 19 _____ as Number _____ B

_____
Director of Parks and Natural Areas

Appendix G | ASSIGNMENT FORM

Assignment Form

Manitoba
Natural Resources
Parks and
Natural Areas

For Cashier's Use Only

VHL/VHP # _____
Rev. Code 1-1-3

VENDOR'S SECTION

I/We _____ of the city/town/etc.

of _____ in the province of _____, being holder of

permit/lease No. _____ expiring _____ covering the following:

LOT _____, BLOCK _____, PLAN _____, SUBDIVISION _____

Assign all my right, title and interest in and to the said permit/lease to:

_____ (a) as Joint Tenants
surname given name(s) (b) as Tenants in Common

of _____
street address city/town/etc. province postal code

_____ _____ _____
witness to lotholder(s) signature lotholder signature date

_____ _____ _____
vendor's phone number(s) lotholder signature date

I further certify that I have not executed or done or been party or privy to any deed or thing by which the permit/lease has been charged, assigned, encumbered, affected or impeached in title.

PURCHASER'S SECTION

I/WE CERTIFY THAT THE ANNUAL FEES ARE PAID IN FULL

I/we as assignee to the above permit/lease have read the terms and conditions of said lease/permit and hereby consent and agree with The Government of Manitoba to observe and perform all of the terms and conditions, and assume all responsibility for and costs relating to non-complying structures, location of structures and overall appearance of the lot, and agree to make improvements to ensure compliance with The Provincial Park Lands Act and regulations and terms and conditions of the lease/permit as directed by the Parks and Natural Areas Branch.

_____ _____ _____
witness to purchaser(s) signature purchaser signature date

_____ _____ _____
purchaser phone number(s) purchaser signature date

NOTE: It is recommended you obtain a surveyor's certificate verifying the location of all structures on the above lot. It is the responsibility of the permittee/lessee to ensure that all structures are located within the surveyed lot boundary. The Parks and Natural Areas Branch will require a copy of the surveyor's certificate if obtained. This assignment deals only with the permit/lease. If buildings are involved in this transaction, it is suggested that the purchaser consult a solicitor.

FOR OFFICE USE ONLY

I certify that the within assignment is registered in the Office of the Director, Parks and Natural Areas Branch,

this _____, day of _____, 19 _____, as Number _____ B

_____
Director of Parks and Natural Areas

SUBMISSIONS TO PROPOSAL CALL (GULL HARBOUR MARINA)

Appendix H

Four submissions were received and accepted by the October 13, 2000 deadline date. The content of these submissions were as follows:

Submission A

A purchase price of $5,000 plus total capital investment of $416,500 in the first four years. The capital investment was to include:

- Build 65' x 50' marine repair shop, boat storage site ($94,500);
- Concrete slip and Marine Travel Hoist and related necessary equipment including a tractor and trailer ($109,000);
- Minor upgrading in year 1 and then construction of a new 768 sq. ft Convenience Store complex with a craft boutique and fast food takeout service in year 2 ($37,000);
- Interior renovations to the Marina Yacht Club (Cantoba Club) ($45,000);
- Interior and exterior renovations to the Motel if it was available ($52,000);*
- Dock replacement program and new dock construction ($34,000);
- Rental boats to meet demand ($20,000);
- Build one cabin in year 4 ($25,000);
- An additional four cabins to be built in years 5 and 6; and
- An indication that financing was from private sources.

* The Motel was not included as an asset to be sold by the Province in the Proposal Call. At an on-site meeting held at the Marina on August 24, 2000 proposers were advised that the Motel Unit would not be part of the assets available. Refer to Findings under Section 9.5.

Submission B

A purchase price of either $5 and a four year capital investment of an additional $291,000, or $50,000 and a four-year capital investment of an additional $241,000. The capital investment was to include:

- Improved restaurant and lounge within the Cantoba Club ($10,000);
- Replacement of the Convenience Store with a new 1500 sq. ft. facility to include a specialty gift and crafts shop and boater clubhouse facilities (washrooms, showers, etc) ($50,000);
- Improvements to yard and premises ($10,000);
- Renovation of an existing cabin and construction of an additional four cabins ($160,000);

Appendix H
(cont'd.)

SUBMISSIONS TO PROPOSAL CALL (GULL HARBOUR MARINA)

- Boat slips and docks repair and/or replacement and an additional 20 new Boat Slips were to be built to accommodate the increased size of boats ($35,000);
- A proposal focused on the development and expansion of facilities to operate on a year round basis which would create jobs for the local economy and included ($26,000):
    - Rentals of boats, canoes, kayaks and bikes;
    - Recreational equipment rentals – balls, badminton racquets and horseshoes;
    - Scheduled boat tours;
    - Guided hiking and boating; and
    - Interpretive programs.
- Personal assets of $57,500; and
- An indication that financing was comprised of $76,000 of personal money and applications for the remaining $215,000 from North-East Interlake Community Futures Development Corporation and Rural Economic Development Initiative.

Submission C

Purchase price of $135,000 was offered with an additional capital investment as outlined below:

- Renovations to the Cantoba Club ($10,000);
- Store – New structure with a cost of $30,000 - $40,000;
- Build two cabins immediately ($25,000 - $30,000 per cabin);
- An additional one or two cabins by the end of the first year of operation;
- Extensive equipment list which consisted of boats, airplane, snowmobiles, tents, furnishing, etc. (A stated value of $500,000);
- Provision of extra electrical hookups and sewer pump out for boats. (No $ value);
- Proposed to provide equipment rentals/tours on a four-season basis; and
- Financing was available through a local credit union. Amount of financing not disclosed.

Submission D

Purchase price of $1 and an additional capital investment of $250,000.

- A minimal proposal with a complete lack of detail.
- Financing was not an issue as no loans were required.

COPY OF LEASE (GULL HARBOUR MARINA)

Appendix I

(Format Revised September 1993)

PROVINCE OF MANITOBA

MANITOBA CONSERVATION

Lease No.

LEASE OF PARK LAND PROPERTY FOR THE OPERATION OF A MARINA, STORE AND ACCOMMODATION FACILITY IN HECLA/GRINDSTONE PROVINCIAL PARK, MADE IN DUPLICATE, DATED , 20

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF MANITOBA, REPRESENTED BY THE HONOURABLE MINISTER OF CONSERVATION,

("the Crown"),

- and -

("the Lessee"),

made pursuant to The Provincial Parks Act and The Short Forms Act.

The Crown and the Lessee agree as follows:

PART 1 - TERM OF AGREEMENT AND DESCRIPTION OF PROPERTY AND PREMISES

1(1) Subject to the terms of this Agreement, the Crown hereby leases to the Lessee the property described in the attached Schedule "A" ("the property") for the term of twenty-one (21) years, commencing on May 1, 2001, and ending on April 30, 2022.

1(2) Unless otherwise provided herein, the property described in paragraph 1(1) is limited to the real property which is owned by the Crown, and the Lessee acknowledges that all other buildings, improvements and the assets and undertakings of any business operated by the Lessee (all of which are collectively described as the "Assets"), are governed by the terms and conditions of this Agreement.

PART 2 - TRANSFER OF FACILITIES

2(1) The parties agree that the buildings and structures identified in Schedule "B" (the "Facilities") shall be treated as personal property and not as real property.

2(2) The Crown hereby transfers its interest in the Facilities to the Lessee in consideration for Five Thousand Dollars ($5,000.00), payment of which shall be made by the Lessee to the Crown within thirty (30) days after the execution of this Agreement by the Crown.

2(3) For the purposes of paragraph 10(4) of this Agreement and subject to the value of any improvements and additions made the Facilities by the Lessee, the value of Lessee's interest in the Facilities shall be limited to Five Thousand Dollars ($5,000.00). This clause shall remain in full force and effect for a period of five (5) years from the date of execution of this lease.

Appendix I (cont'd.)

COPY OF LEASE (GULL HARBOUR MARINA)

2(4) Unless otherwise provided herein, the Lessee acknowledges that the Facilities shall be governed by the terms and conditions of this Agreement.

PART 3 - QUIET ENJOYMENT

3(1) Subject to the terms of this Agreement, the Crown covenants with the Lessee for the quiet enjoyment of the premises.

PART 4 - RENT AND SERVICE FEES

4(1) The Lessee shall pay once annually to the Crown:

(a) a land rental fee determined in accordance with this Part and the Regulations under the Provincial Parks Act; and

(b) service fees prescribed from time to time by Regulation under the Provincial Parks Act,

within 30 days of receipt of an invoice therefor from the Crown. The Lessee acknowledges that the land rental fee as of the date of this Agreement is $400.00 and the service fee as of the date of this Agreement is $1,960.00.

4(2) Payments of the land rental fee and the service fees shall be made in accordance with the directions contained in the invoice from the Crown.

4(3) The Lessee acknowledges that:

(a) the Minister may grant to an applicant a lease of a commercial lot in a provincial park for a term not exceeding 21 years, renewable for such additional term not exceeding 21 years as may be specified in the lease; and

(b) the fees payable in respect of permits and leases are those set out in a regulation under The Provincial Parks Act.

4(4) The Crown may at its option in any year establish a new annual rent to take effect May 1st by providing notice of the change of the annual rent in writing to the Lessee on or before January 15th of that year.

4(5) The Crown may establish a new rental rate where there is a change in one or more of the following factors to reflect those changes:

(a) the appraised value of the raw land as determined by the Crown; and

(b) the policy of the Crown as set out in an Act of the Legislature or a Regulation relating to the determination of annual rent as a percentage of the appraised value of the raw land.

4(6) Where the Crown establishes a new rental rate under subsection 4(5)(a) to reflect a change in the appraised value of the raw land as determined by the Crown, and the Lessee disputes the reasonableness of the determination of the appraised value, the Lessee may, by providing notice in writing to the Crown, submit the matter in dispute to arbitration under The Arbitration Act (Manitoba).

4(8) The Lessee shall pay to the Crown interest on any arrears of annual rent and service fees at a rate fixed from time to time by a regulation under The Provincial Parks Act.

COPY OF LEASE (GULL HARBOUR MARINA)

Appendix I (cont'd.)

PART 5 - OPERATION OF PREMISES

5(1) The Lessee shall use the premises solely for the operation of a facility consisting of a full service marina with fuel services, boat and engine repairs, boat docking, boat rentals, dry land boat storage, licensed restaurant and cocktail lounge, certificate of hotel registration, retail vendor sales, laundry and shower facilities and commercial accommodations in the Canloba Club building, motel unit , five (5) rental cabins and other activities consistent with the operation of a marina, accommodation and food service operation with the prior written consent of the Crown, that consent not to be unreasonably withheld.

5(2) The Lessee may, with the approval of the Crown, construct and operate additional facilities on the premises in accordance with plans approved by the Crown and on terms and conditions set by the Crown. The Crown will not unreasonably withhold approval provided that the construction and operation of the additional facilities are consistent with the use clause being paragraph 5(1) hereof. In the event that the Crown withholds approval, the Crown will forthwith, by notice in writing, inform the Lessee of the reason(s) for withholding approval for the construction and operation of additional facilities.

5(3) The Lessee shall provide a complement of staff as necessary to ensure proper on-site operation of the premises in accordance with paragraph 5(1).

5(4) The Lessee agrees to furnish the premises in a manner suitable to enable the operation of the premises for the purposes set out in paragraph 5(1).

5(5) The Crown permits the Lessee to use or allow the premises to be used as a chief place of residence for the Lessee and any other person in order to provide for the operation of the facility in accordance with paragraph 5(1).

5(6) The Lessee agrees to obey and comply with The Provincial Parks Act and all regulations thereunder.

5(7) The Lessee shall operate business activities on the premises on days and hours that are reflective of both the business and operations of the Lessee, and the needs of the park visitors, and the Lessee shall post upon the premises those days and hours of operations.

5(8) The Lessee shall comply with all federal, provincial and municipal laws and regulations.

5(9) The Lessee shall obtain all licenses or permits necessary for the lawful operation of the premises.

5(10) The Lessee shall not allow any advertising, signing or promotional materials to be placed on the premises, except reasonable on-site and directional advertising and/or signs.

5(11) The Lessee agrees to provide free and unencumbered public access to the Federal wharf at the Gull Harbour location.

Appendix I (cont'd.)

COPY OF LEASE (GULL HARBOUR MARINA)

PART 6 - MAINTENANCE OF PREMISES

6(1) Subject to paragraphs 6(2) and 6(3), the Lessee agrees:

(a) to keep the premises in a clean and sanitary condition free from inflammable materials except those necessary to operate in accordance with paragraph 5(1);

(b) to comply with **The Environment Act and all regulations** thereunder;

(c) not to commit waste or damage the premises;

(d) to keep the premises in good repair; and

(e) to allow a person or persons on behalf of the Crown to enter the premises at all reasonable times to examine the state of repair.

6(2) If during the term of this Agreement the premises are damaged by fire, flood or act of God, so that they cannot be repaired with reasonable diligence within one hundred and eighty (180) days of the damage or such other reasonable period from the date of the damage as may be stated in a Certificate of an Architect provided by the Lessee to the Crown within thirty (30) days of the date of the damage, this Agreement shall terminate from the date of the damage and the Lessee shall immediately surrender the premises and all interest therein to the Crown and the Lessee shall pay rent until the time of the damage.

6(3) Subject to paragraph 6(4), if the premises are damaged by fire, flood or act of God, and can be repaired with reasonable diligence within one hundred and eighty (180) days from the date the damage occurred or such other reasonable period from the date of the damage as may be stated in a Certificate of an Architect provided by the Lessee to the Crown within thirty (30) days of the date of the damage, and if the damage is such as to render the premises unfit for operation for the purposes of this Agreement, the Lessee shall repair the premises with all reasonable speed and rent shall not accrue for sixty (60) days, but shall accrue in respect of the rent component for the land and for those service levies, as in the opinion of the Crown, relate to services used by the Lessee for the period beyond sixty (60) days and, if the Lessee does not complete the repairs to the extent that the premises are operational within one hundred and eighty (180) days from the date of the damage or the reasonable period from the date of the damage specified in the Architect's Certificate, the Crown may, at its option, terminate the lease and re-enter the premises.

6(4) All rent shall accrue in respect of the premises once the premises are repaired such that they are suitable for operation for the purposes of this Agreement.

6(5) **The Short Forms Act** does not apply to paragraphs 6(1)(d) and 6(1)(e).

6(6) The Lessee agrees to be responsible for any costs, outside of normal wear and tear, associated with repairs or maintenance to the roadway from the boat launch to the boat storage and marine shop area which, in the opinion of a qualified engineer, can be directly attributable to the operation of the marine travel hoist.

PART 7 - PAYMENT OF TAXES AND UTILITIES

7(1) The Lessee agrees to pay taxes.

7(2) The Lessee agrees to pay all electric power charges and assessments in respect of the premises.

7(3) If the Lessee fails to pay any or all taxes or electric power charges and assessments as required by paragraphs 7(1) and 7(2), the Crown may pay them or any of them and charge those payments to the Lessee who shall reimburse the Crown forthwith and the Crown may take the same steps for the recovery of those payments as it would for the recovery of rent and arrears.

COPY OF LEASE (GULL HARBOUR MARINA)

Appendix I (cont'd.)

7(4) This Agreement creates no obligation for the Crown to survey or resurvey the premises.

PART 8 - NO ASSIGNMENT OR SUBLEASE WITHOUT CONSENT

8(1) The Lessee shall not assign or sublet the premises without the consent of the Crown, that consent not to be unreasonably withheld.

8(2) Subject to paragraph 8(3), the Crown shall not unreasonably withhold consent to the assignment of a Lease for collateral (financing and security) purposes.

8(3) In instances where an assignment for collateral purposes is consented to by the Crown, the Crown will maintain a record thereof, and not consent to a further assignment of the Lease by the Lessee itself (except for secondary or additional assignments for collateral purposes) to third parties without the consent of prior holders of assignments for collateral purposes.

PART 9 - INSURANCE AND INDEMNITIES

9(1) The Lessee shall use due care in the operation of the premises to ensure that no person is injured, no property is damaged or lost and no rights are infringed.

9(2) The Lessee shall be solely responsible for:

(a) any injury to persons (including death), damage or loss to property or infringement of rights caused by, or related to the operation of the premises or the performance of this Agreement or the breach of any term or condition of this Agreement by the Lessee or any agent or employee of the Lessee, and

(b) any omission or wrongful or negligent act of the Lessee, or of any agent or employee of the Lessee;

and shall save harmless and indemnify the Crown, its officers, employees and agents from and against all claims, liabilities and demands with respect to clauses (a) and (b). This paragraph shall survive the termination or expiration of this Agreement.

9(3) The Lessee shall provide, maintain and pay for comprehensive general liability insurance protecting the Lessee and its employees against claims by third parties for any injury to persons (including death), damage or loss to property which may arise directly or indirectly out of the occupation of the premises or the performance of this Agreement by the Lessee. That insurance shall be placed with an insurance company or companies and be in such form as may be acceptable to the Crown and shall be for an amount of not less than TWO MILLION DOLLARS ($2,000,000.00), inclusive of any one occurrence and shall name the Crown as an additional named insured with respect to the operations of the Lessee under this Agreement. The policy of insurance shall include a standard form of Cross Liability Clause and extend to cover the Lessee's public liability and property interest. Evidence of insurance in the form of a Certificate of Insurance shall be provided to the Crown by the Lessee within thirty (30) days of the execution of this Agreement. Evidence of renewal of insurance in the form of a Certificate of Renewal of Insurance shall be provided to the Crown by the Lessee at least thirty (30) days prior to the expiry of an insurance policy. The Lessee agrees not to vary the insurance policy in any manner which may adversely affect the Crown's interest therein.

9(4) In the event that the Lessee fails to maintain the insurance policy referred to in paragraph 9(3), the Crown may require the Lessee to remedy that default forthwith and if the Lessee fails to do so within thirty (30) days of receipt of that notice, the Crown may forthwith by notice in writing terminate this Agreement and re-enter the premises.

Appendix I (cont'd.)

COPY OF LEASE (GULL HARBOUR MARINA)

9(5) In addition to the rights of the Crown under paragraph 9(4), in the event that the Lessee fails to maintain the insurance policy referred to in paragraph 9(3), the Crown may, at its option, obtain the required insurance policy and may add the cost of the insurance policy plus an administration cost equal to twenty (20) percent of the cost of the insurance policy as additional rent. If the Lessee fails to pay that additional rent within thirty (30) days of receipt of a notice in writing from the Crown that the additional rent is due and payable, the Crown may forthwith, by notice in writing, terminate this Agreement and re-enter the premises. The Crown may maintain that insurance policy until such time as the Lessee provides evidence in the form of a Certificate of Insurance that it has obtained the insurance policy required by paragraph 9(3).

PART 10 - TERMINATION AND EXTENSION

10(1) Provided that there has been no default by the Lessee, the Agreement may be renewed at the option of the Lessee for one additional term of twenty-one (21) years upon the same terms and conditions, save and except for rent which shall be determined by the Crown in accordance with then current laws, regulations or policies respecting rental rates for rental property of this type. The Lessee shall provide notice in writing to the Crown of its request to renew the Agreement in accordance with this Part at least six (6) months prior to the expiration of the Agreement.

10(2) At the end of the lease renewal period this Agreement will expire.

10(3) The Crown or the Lessee may terminate this Agreement on April 30th of any year of this Agreement by giving notice in writing to the other party at least one (1) year prior to the date of termination.

10(4) In the event that the Crown terminates this Agreement in accordance with paragraph 10(3), the Crown agrees to pay to the Lessee due compensation for the Lessee's estate or interest, including the property referred to in paragraph 1(1), the assets referred to in paragraph 1(2) and the Facilities referred to in paragraph 2(1) of this Agreement, taking into account the unexpended portion of the Lease including the Lease renewal period, and the provisions of The Expropriation Act of Manitoba relating to the determination of due compensation and costs shall apply. Due compensation shall be determined based on the date of notice of termination and will be reduced by any amounts owing to the Crown from the Lessee arising pursuant to this Agreement.

10(5) In addition to its rights under paragraph 10(3), and without restricting any other remedies available, and subject to the provisions of paragraph 10(6) hereof, the Crown may, at its sole option, immediately terminate this Agreement in writing if the Lessee has failed to comply with any term or condition of this Agreement including the payment of rent and has not remedied that failure to comply within ninety (90) days of receipt of notice in writing from the Crown.

10(6) The Crown agrees not to terminate this agreement in accordance with paragraph 10(5) in instances where collateral assignments are recorded, without providing notice in writing to the holder of such collateral assignments (the "Security Holder"). The Crown acknowledges that the Security Holder:

(a) has the authority to cure defaults of the Lessee, within a reasonable time frame of not less than 90 days as stipulated in the notice, so as to avoid termination of the Lease;

(b) shall not be obligated to go into possession, nor to operate the Lessee's business, but the Crown may at its option and its own expense unless otherwise agreed, in cooperation with the Security Holder, manage or operate the Lessee's business on terms to be agreed between the Crown and the Security Holder; and

(c) has the authority to assign the Lessee's interest in the Lease to a third party purchaser, subject to the consent of the Crown being required, but which shall not be unreasonably withheld; provided that as a condition of any such assignment, such subsequent assignee shall be obligated to

COPY OF LEASE (GULL HARBOUR MARINA)

Appendix I (cont'd.)

execute such documentation as the Crown considers reasonable to bind the assignee directly to the Crown on the terms and conditions as contained in the original Lease, and all defaults of the Lease shall be cured and brought to good standing.

10(7) In the event that the Crown terminates this Agreement in accordance with paragraphs 6(2), 6(3), 9(4), 9(5) or 10(5), or the Lessee terminates this Agreement, or the lease expires either at the end of the lease term or at the end of the lease renewal period, the Lessee shall within six (6) months of the termination date either:

(a) remove all or any part of the structures, improvements and appurtenances (the Assets) added to the property or Facilities by or on behalf of the Lessee; or

(b) dispose of the Assets added to the property or Facilities by or on behalf of the Lessee in a manner satisfactory to the Crown;

and at the end of six (6) months, the Lessee shall be deemed to have fully completed such removal, and any Assets left on the property or Facilities as at such date shall vest in the Crown, and the Lessee shall be deemed to have released and quit-claimed any interest therein to and in favour of the Crown.

10(8) Other than in accordance with this Agreement or with conditions in writing provided by the Crown, the Lessee shall not remain in possession of the property following the expiration or termination of this Agreement.

PART 11 - ENTIRE AGREEMENT

11(1) This document, the attached Schedules and letter to from dated March 8, 2001 contain the entire agreement between the parties. There are no undertakings, representations or promises, express or implied, other than those contained in this Agreement.

11(2) No amendment or change to, or modification of, this Agreement shall be valid unless it is in writing and signed by both parties.

PART 12 - APPLICABLE LAW

12(1) This Agreement shall be interpreted, performed and enforced in accordance with the laws of Manitoba.

12(2) In the event of any dispute, the parties shall resolve same by reference to The Arbitration Act, and each party hereto shall appoint its own representative.

Appendix I (cont'd.)

COPY OF LEASE (GULL HARBOUR MARINA)

PART 13 - NOTICES

13(1) Any notice or other communication to the Crown under this Agreement shall be in writing and shall be delivered or sent by registered mail, postage prepaid to: Parks and Natural Areas Branch, Manitoba Conservation, Box 51, 200 Saulteaux Crescent, Winnipeg, Manitoba R3J 3W3.

13(2) Any notice or other communication to the Lessee under this Agreement shall be in writing and shall be delivered personally to the Lessee or an officer or employee of the Lessee or sent by registered mail, postage prepaid, to:

13(3) Any notice or communication sent by registered mail shall be deemed to have been received on the third (3rd) business day following the date of mailing. If mail service is disrupted by labour controversy, notice shall be delivered personally.

13(4) Either party may provide notice of change of address to the other in writing and thereafter all notice shall be provided to the new address.

This Agreement has been executed by the Minister of Conservation on behalf of the Province of Manitoba and by the Lessee by its duly authorized representative on the dates noted below.

SIGNED IN THE PRESENCE OF:

_____
Witness

FOR THE GOVERNMENT OF MANITOBA

_____
Minister of Conservation

_____
DATE

FOR THE LESSEE

_____
Witness

_____
Per

_____
DATE

COPY OF LEASE (GULL HARBOUR MARINA)

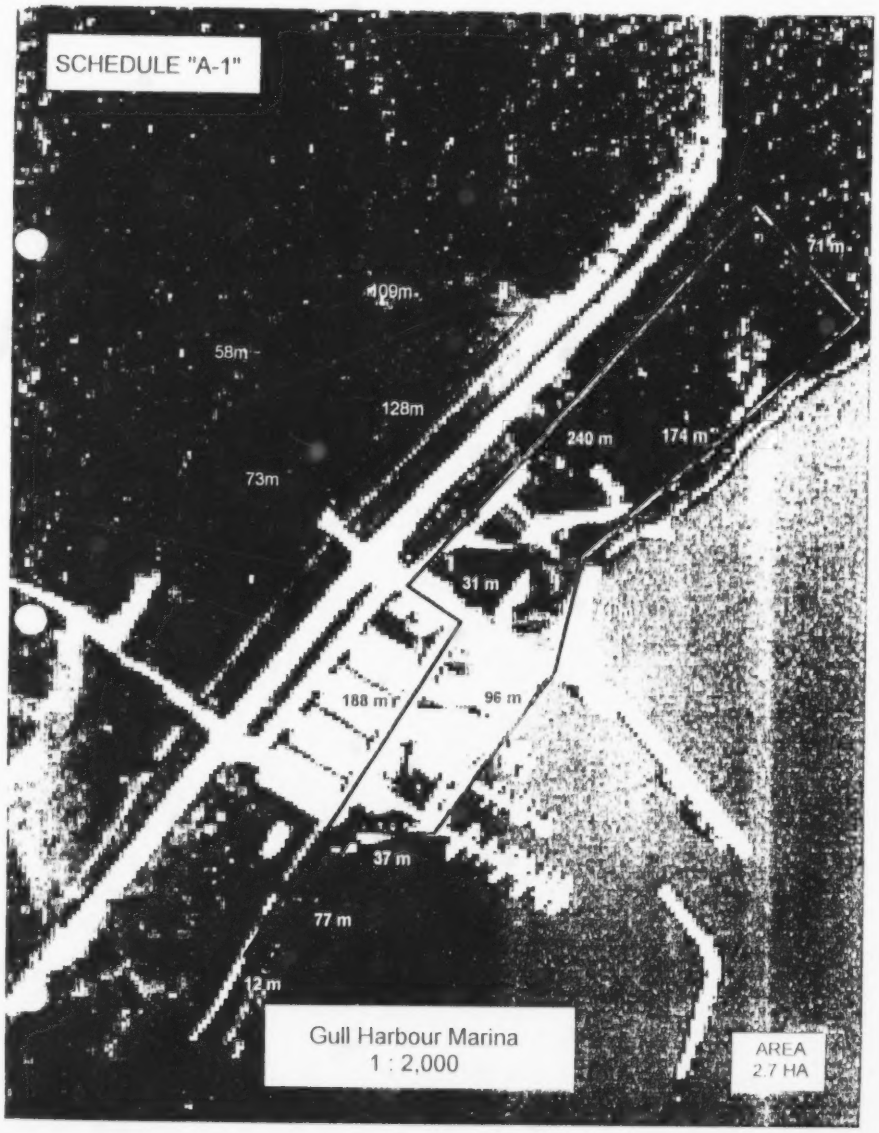
Appendix I
(cont'd.)

9

SCHEDULE "A"

LEGAL DESCRIPTION OF PROPERTY

All that certain parcel or tract of land lying, situate and being in the Province of Manitoba and more particularly described as being at Gull Harbour in Hecla/Grindstone Provincial Park as shown outlined in red on the attached orthophotograph marked as "Schedule A-1" and containing approximately 2.7 hectares more or less.



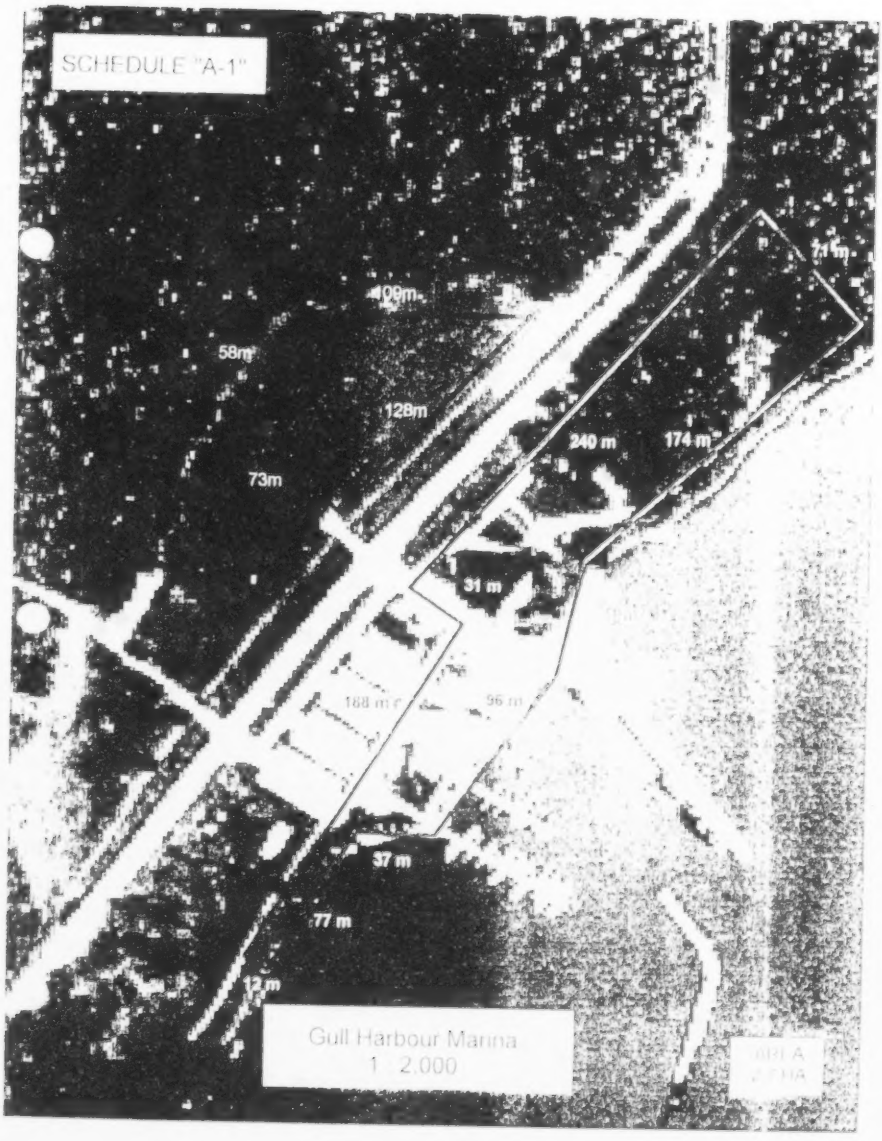
COPY OF LEASE (GULL HARBOUR MARINA)

Appendix I
(cont'd.)

SCHEDULE "A"

LEGAL DESCRIPTION OF PROPERTY

All that certain parcel or tract of land lying, situate and being in the Province of Manitoba and more particularly described as being at Gull Harbour in Hecla/Grindstone Provincial Park as shown outlined in red on the attached orthophotograph marked as "Schedule A-1" and containing approximately 2.7 hectares more or less.



Appendix I (cont'd.)

COPY OF LEASE (GULL HARBOUR MARINA)

10

SCHEDULE "B"

The following buildings and structures are present on the land and are being transferred to the Lessee pursuant to this Agreement: Cantoba Club Building and contents, Patio Deck, Store and contents, Shed and contents, Motel Unit and contents, Cottage and contents, Gasoline Pumps and Docks (the "Facilities").

Appendix J

APPROVAL PROCESS FOR DOCUMENTS

Approval Process for Documents				
Process	**Legislative Authority**	**Legislative Approval By**	**Who Approved**	**Reason for Difference**
Lot lease	Provincial Parks Act, Section 16(1)	Minister	Manager, Parks Districts	Delegated signing authority through Order-In-Council
Lot lease	Provincial Parks Act, Section 16(1)	Minister	Head, Commercial Operations*	Delegated signing authority through Order-In-Council
Lot lease	Provincial Parks Act, Section 16(1)	Minister	Head, Vacation Home Lots*	Delegated signing authority through Order-In-Council
Assignment of leases	Provincial Parks Act, Section 16(3)	Minister	Director of Parks	Delegated signing authority through Order-In-Council
Assignment of leases	Provincial Parks Act, Section 16(3)	Minister	Manager, Parks Districts	Delegated signing authority through Order-In-Council
Assignment of leases	Provincial Parks Act, Section 16(3)	Minister	Head, Vacation Home Lots*	Delegated signing authority through Order-In-Council
Marina lease	Provincial Parks Act, Section 16(1)	Minister	Director of Parks	Delegated signing authority through Order-In-Council
Sale of Crown assets	Various	Minister	Director of Parks**	Delegated signing authority through Order-In-Council
Sale of Crown assets	Various	Minister	Manager, Support Services*	Delegated signing authority through Order-In-Council

* Employee did not have authorized delegated signing authority.
** Employee exceeded monetary restriction of authorized delegated signing authority.

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Assignment of leases	Provincial Parks Act, Section 16(3)	Minister	Director of Parks	Delegated signing authority through Order-In-Council
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Sale of Crown assets	Various	Minister	Manager, Support Services*	Delegated signing authority through Order-In-Council

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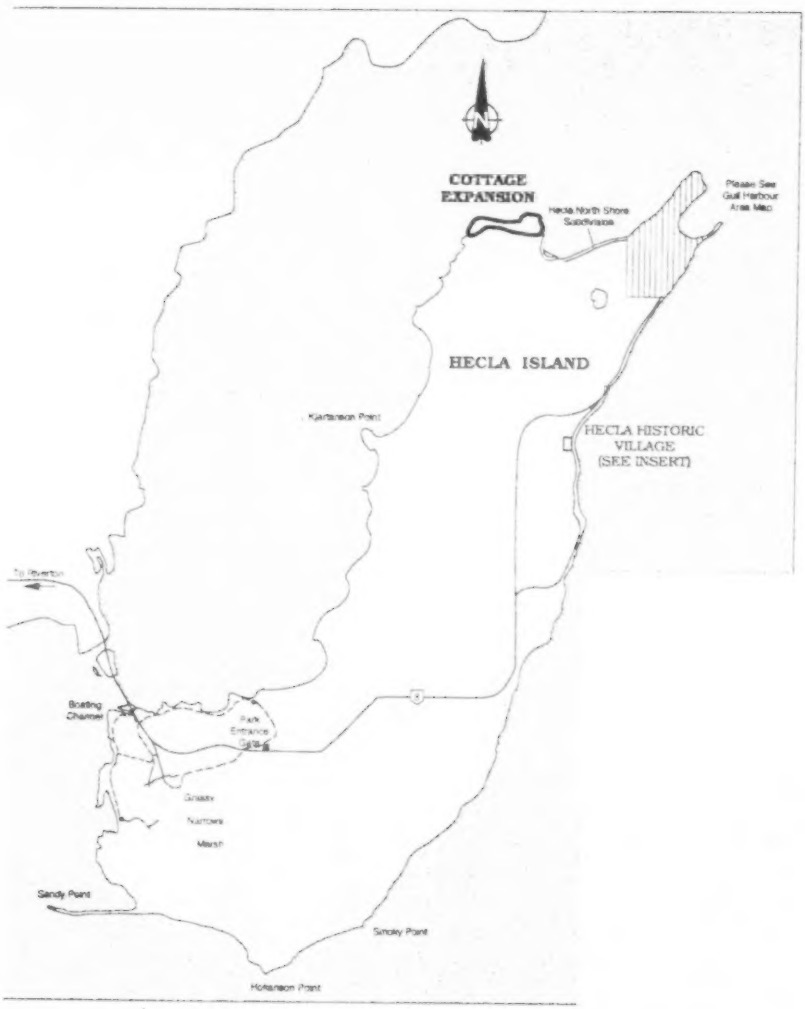
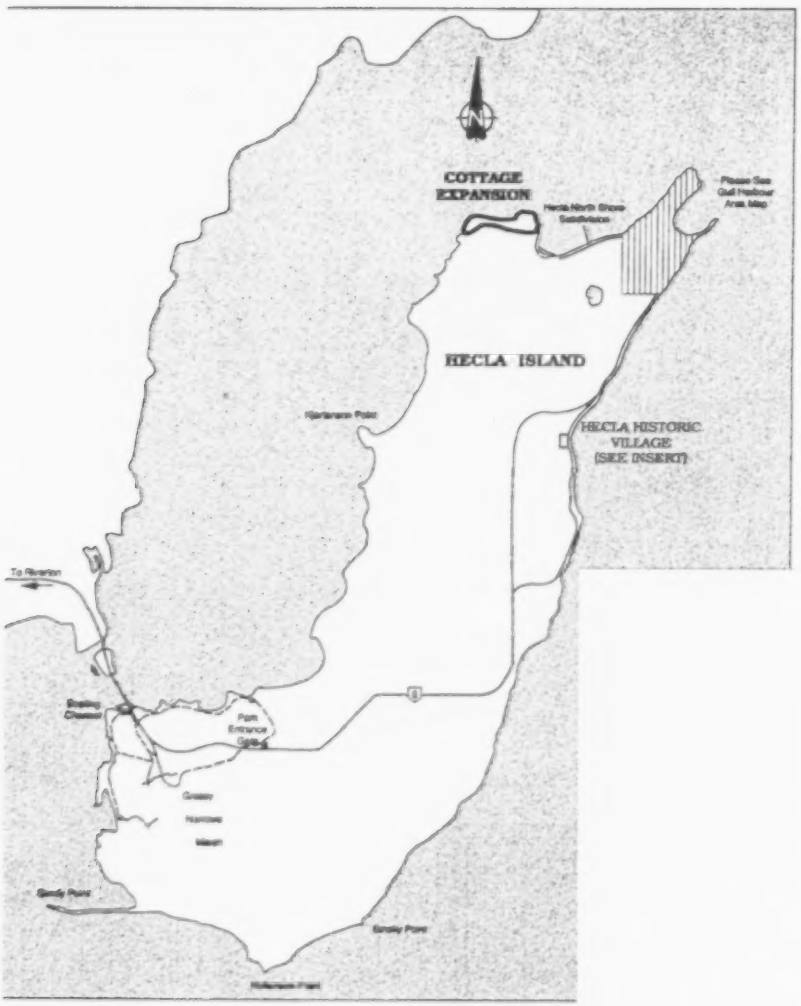
Appendix K | HECLA ISLAND



Appendix K

HECLA ISLAND



Excerpt: The Auditor General Act

Audit of government accounts

9(1) The Auditor General is the auditor of the accounts of the government, including those relating to the Consolidated Fund, and must make any examinations and inquiries that he or she considers necessary to enable the Auditor General to report as required by this Act.

Audit of other public money

9(2) The Auditor General is responsible for examining and auditing public money that is not part of the Consolidated Fund, unless an Act provides otherwise.

Content of the report

10(2) The report must indicate anything resulting from the work of the Auditor General that he or she considers should be brought to the Assembly's attention, including, but not limited to, circumstances in which

(a) required information was not provided or was not provided within a reasonable time;

(b) accounts were not properly kept or public money was not fully accounted for;

(c) essential records were not maintained, or the rules and procedures applied were insufficient to

- ***(i)*** safeguard and control public property,
- ***(ii)*** secure an effective check on the assessment, collection and proper allocation of revenue, or
- ***(iii)*** ensure that expenditures were made only as authorized;

(d) public money was expended for purposes other than those for which it was appropriated by the Legislature;

(e) financial and administrative provisions of Acts, regulations, policies and directives were not complied with.

Audit of recipient of public money

15(1) The Auditor General may conduct an examination and audit in respect of public money received by a recipient of public money, including the matters listed in subsection 14(1), and may require the recipient to prepare and give to the Auditor General the financial statements setting out the details of the disposition of the public money received.

No obstruction

15(2) No person shall obstruct or provide false or misleading information to the Auditor General or a person employed under the Auditor General in conducting an examination or audit under this section, or conceal or destroy any records or things relevant to an examination or audit.

Reliance on report of other auditor

15(4) The Auditor General may rely on the report of an auditor appointed by a recipient of public money.

Special audit request

16(1) When requested to do so by the Lieutenant Governor in Council or the Minister of Finance, or by resolution of the Standing Committee on Public Accounts, the Auditor General may examine and audit the accounts of a government organization, recipient of public money or other person or entity that in any way receives, pays or accounts for public money. But the Auditor General is not obliged to do so if he or she is of the opinion that it would interfere with the primary responsibilities of the Auditor General.

Access to information

18(2) The Auditor General may require and is entitled to receive any information necessary for the purpose of this Act from

(a) any person in the public service or formerly in the public service;

(b) any current or former director, officer, employee or agent of a government organization or of a recipient of public money; or

(c) any other person, organization or other body that the Auditor General believes on reasonable grounds may have information relevant to an examination or audit under this act.

Openness Teamwork Professional Excellen

pect Honesty Balanced Perspecti